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HO. OF REPS.
EXECUTIVE.

(1)

AFRICANS TAKEN IN THE AMISTAD.

W. W. Patton.

CONGRESSIONAL DOCUMENT,

CONTAINING

THE CORRESPONDENCE, &c.,

IN RELATION TO THE

CAPTURED AFRICANS.

NEW YORK :
FOR SALE AT THE ANTI-SLAVERY DEPOSITORY,
No. 131 NASSAU STREET, (CLINTON HALL.)

Price 12½ cents.

1849.

TO THE PEOPLE OF THE UNITED STATES.

THE message from the President of the United States, communicating to the House of Representatives the action of the Government in relation to the captured Africans, was sent in consequence of a resolution of the Hon. John Quincy Adams. How large an edition was printed we do not know, but a letter from a Member of Congress says,—“ I sent to a friend my own copy before I had read it, and on going to the Document-Room immediately afterwards, I found I could not supply its place, and I have had to *borrow the reading of it.*” Whether the document was found to be so interesting that Members of Congress caught them up with unusual avidity to send to their constituents, or a large portion of them were destroyed as an incendiary production, we are unadvised. But so great has been the inquiry for the pamphlet *in the free States*, and so extraordinary is its character, that it has been deemed best to re-publish it for the use of Members of Congress and their constituents, omitting only some of the ship papers, and the originals of letters of which the translations were published in the original document, with explanatory and critical notes, &c. Otherwise, it is an exact copy of the document printed by order of the House of Representatives.

The attention of the free people of this country is invited to the contents of this public document, and they will not fail to notice with astonishment the attempt of the executive to interfere with the regular administration of justice. The Government of a free people should protect defenceless strangers thrown, by the providence of God, after a successful struggle for liberty, upon their shores, and not give them up to foreign claimants unless imperiously required to do it by treaty. But in this instance, it will appear that instead of interposing the national Ægis to shield the weak and oppressed, our government has lent all the aid and facilities at its command to have them placed in the hands of the Spaniards, with certain knowledge that many of them would be put to death! These Africans are detained in jail, under process of the United States Courts, in a free State, after it has been decided by the District Judge, on sufficient proof, that they are recently from Africa—were never the lawful slaves of Ruiz and Montes—that the libels of these Spanish claimants should be dismissed with costs—and when it is clear as noon-day that there is no law or treaty stipulation that requires the further detention of these Africans or their delivery to Spain or its subjects. And this, on the demand of the Spanish minister, who has been allowed to come into an American Court, and appeal, when the parties themselves—his countrymen—have made no appeal from the righteous decision of the District Court!

And this is not all. The Circuit Court have refused to admit the children—three little girls and a boy—to bail, after ample security was offered, and *they*, as well as the rest, are to be confined, it seems, *nine months longer* in jail to await the decision of the Supreme Court of the United States. We ask the attention of the law-loving and liberty-loving people of the United States to these things.

AFRICANS TAKEN IN THE AMISTAD.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

The information required by the resolution of the House of Representatives of the 23d ultimo, in relation to the Africans taken in the vessel called the Amistad, &c.

APRIL 15, 1840.

Read, and laid upon the table.

To the House of Representatives :

I communicate to the House of Representatives a report from the Secretary of State, with documents containing the information called for by their resolution of the 23d instant.

M. VAN BUREN.

WASHINGTON, March 31, 1840.

DEPARTMENT OF STATE,

Washington, March 31, 1840.

The Secretary of State, to whom has been referred a resolution of the House of Representatives of the 23d instant, requesting the President to communicate to that House, "if not incompatible with the public interest, copies of any demand made by the minister or other diplomatic representative of Spain in this country, of the surrender to him of the Africans taken in, or belonging to, the vessel called the *Amistad* ; and of all correspondence between this Government and the said minister or diplomatic representative, and with any other foreign Government or minister thereof, relating thereto ; also, copies of all instructions from the Department of State to the district attorney of the United States in the judicial district of Connecticut, and all reports of the said district attorney to the said department relating to that subject ;" has the honor to lay before the President copies of all the correspondence and papers on the records and files of this department relative thereto, except a recent correspondence with the Spanish minister in regard to testimony prepared to be furnished in the future investigation of the cause of the *Amistad* before the tribunals of the United States.

JOHN FORSYTH.

To the PRESIDENT.

Mr. Calderon to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, September 6, 1838.

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty the Queen of Spain, has the honor of calling the attention of the honorable John Forsyth, Secretary of State of the United States, to a recent and very public occurrence of which, no doubt, Mr. Forsyth is already informed, and in consequence of which it is the imperious duty of the undersigned to claim an observance of the law of nations, and of the treaties existing between the United States and Spain. The occurrence alluded to is the capture of the Spanish schooner "*Amistad*."

This vessel sailed from Havana on the 28th of June, bound to Guanaja, in the vicinity of Porto Principe, under the command of her owner, Don Ramon Ferrer, laden with sundry merchandise, and with fifty-three negro slaves on board; and, previous to her departure, she obtained her clearance (*alijo*) from the custom-house, the necessary permit from the authorities for the transportation of the negroes, a passport, and all the other documents required by the laws of Spain for navigating a vessel and for proving ownership of property: a circumstance particularly important in the opinion of the undersigned.

During the night of the 30th of said month, or about daybreak on the following day, the slaves rose upon the crew, and killed the captain, a slave of his, and two sailors—sparing only two persons, after ill-treating and wounding them, namely, Don Jose Ruiz and Don Pedro Montes; of whom the former was owner of forty-nine of the slaves, and the latter of the other four. These they retained, that they might navigate the vessel and take her to the coast of Africa. Montes, availing himself of his knowledge of nautical affairs, and under favor of Divine Providence, succeeded in directing the vessel to these shores. He was spoken by various vessels, from the captains of which the negroes bought provisions, but to whom, it seems, he was unable to make known his distress, being closely watched. At length, by good fortune, he reached Long Island sound, where the "*Amistad*" was detained by the American brig-of-war "*Washington*," Captain Gedney, who, on learning the circumstances of the case, secured the negroes, and took them, with the vessel, to New London, in the State of Connecticut.

The conduct of that commander and his subalterns towards the unfortunate Spaniards has been that which was to be expected from gentlemen, and from officers in the service of an enlightened nation friendly to Spain. That conduct will be appreciated as it deserves by my august sovereign, and by the Spanish Government, and will be reciprocated on similar occasions by the Spaniards—a people ever grateful for benefits received.

The act of humanity thus performed would have been complete, had the vessel at the same time been set at liberty, and the negroes sent to be tried by the proper tribunal, and by the violated laws of the country of which they are subjects. The undersigned is willing to believe that such would have been the case, had the General Government been able to interpose its authority in the first instance, as it has probably done during the short interval between the occurrence of this affair and the period when the undersigned received an authentic statement of the facts.

In the mean time, however, the schooner "*Amistad*" has been deliver-

ed up to the United States marshal in New Haven, who, in conjunction with the district judge, A. T. Judson, has instituted proceedings in the case, and adopted resolutions founded on the declarations first received; and, according to information from Her Majesty's consul for Boston, who repaired to the scene of this occurrence, the officers of the "Washington," in the service of the United States, have presented to that incompetent tribunal a petition, which has been admitted, claiming salvage: a claim which, in view of the existing treaties, the undersigned conceives cannot be allowed in the sense in which it is made.

Having related the principal facts, the undersigned will not trouble Mr. Forsyth with the details, as well because he presumes that he is fully acquainted with them, as because they would add little or no weight to the justice with which the undersigned, in discharge of his duty, is induced to ask—

1st. That the vessel be immediately delivered up to her owner, together with every article found on board at the time of her capture by the Washington, without any payment being exacted on the score of salvage, nor any charges made, other than those specified in the treaty of 1795, article 1st.

2d. That it be declared that no tribunal in the United States has the right to institute proceedings against, or to impose penalties upon, the subjects of Spain, for crimes committed on board a Spanish vessel, and in the waters of the Spanish territory.

3d. That the negroes be conveyed to Havana, or be placed at the disposal of the proper authorities in that part of Her Majesty's dominions, in order to their being tried by the Spanish laws which they have violated; and that, in the mean time, they be kept in safe custody, in order to prevent their evasion.

4th. That if, in consequence of the intervention of the authorities of Connecticut, there should be any delay in the desired delivery of the vessel and the slaves, the owners both of the latter and of the former be indemnified for the injury that may accrue to them.

In support of these claims, the undersigned invokes the law of nations, the stipulations of existing treaties, and those good feelings so necessary to the maintenance of the friendly relations that subsist between the two countries, and are so interesting to both.

The undersigned would be apprehensive of offending Mr. Forsyth by supposing it in the least degree necessary to bring to his recollection his own well-known construction (*disposiciones*) of the law of nations in a case analogous to the one under consideration; and he deems it equally unnecessary to enumerate the several cases in which, in obedience to that law, not only American citizens who have committed some crime on the high sea have been sent by other Governments to the United States in order to their being tried according to the laws of said States, but even foreigners who have offended against the laws on board of American vessels.

In respect to the stipulations subsisting between this republic and Spain, the undersigned conceives that, in support of his pretensions, he cannot do better than to cite the 8th, 9th, and 10th articles of the treaty of 1795, which articles continued in full force by the declaration *ad hoc* contained in the 12th article of the treaty of 1819, namely:

"ART. 8. In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, *pursuit of pirates or enemies or any*

other urgent necessity, for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports, belonging to the other party, they shall be received and treated with all humanity, and enjoy all favor, protection and help; and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals and all things needful for the subsistence of their persons, or reparation of their ships, and prosecution of their voyage; and they shall no ways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance.

ART. 9. *All ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either State, and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.*

ART. 10. *When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees, on the part which they shall relade and carry away."*

The crime in question is one of those which, if permitted to pass unpunished, would endanger the internal tranquillity and the safety of the island of Cuba, where the citizens of the United States not only carry on a considerable trade, but where they possess territorial properties which they cultivate with the labor of African slaves. These, on learning that the crime alluded to had been committed with impunity, (and their friends would not fail to acquaint them with the fact,) would lose none of the opportunities for attempting revolt and evasion, which are afforded by the frequent and daily necessity of conveying negroes by sea from one quarter of the island to another; and to guard against this it would be necessary to use additional precautions at a great expense. If, on the other hand, they should be condemned by the incompetent tribunal that has taken upon itself to try them as pirates and assassins, the infliction of capital punishment in this case would not be attended with the salutary effects had in view by the law when it resorts to this painful and terrible alternative, namely, to prevent the commission of similar offences. In such case, the indemnification I officially ask for the owners would be a very slender compensation; for, if the property remained unimpaired, as it would remain, the satisfaction due to the public would not be accorded. The dread of a repetition of these acts might be expected to take possession of the minds of the people residing in the islands of Cuba and Porto-Rico; and, in lieu of the harmony and good feeling subsisting between them and the citizens of the United States, it would not be surprising, nor would it afford a cause for complaint, if sentiments were awakened of a different nature, and highly prejudicial to the interests of both parties. How can the man who promotes or advocates discord in families expect to be regarded with benevolence? or how can he who acts in such a manner pretend to the title of friend?

The undersigned does not apprehend that the fears herein expressed

by him will be deemed exaggerated or unfounded. No one is ignorant of the existence of a considerable number of persons who, prompted by a zeal which it does not belong to him to qualify, are employing all the means which knowledge and wealth can afford for effecting, at any price, the emancipation of the slaves. Many of them, either because they are persuaded of the philanthropy of their designs, or assuming this virtue as a cloak, have no hesitation in repaying the hospitality they receive by the seduction of the slaves of their host, especially if they are skilful in any trade. Having induced them to abandon their masters, they ship them on board some vessel, where they retain them in a worse state of captivity than before, or send them to the United States to be set at liberty: thus appropriating to themselves the property of another, and deliberately committing a theft, while, perhaps, they believe that they are performing a meritorious act. In the mean time, the only resource of the ruined Spanish proprietor is to apply, at an enormous expense, to the tribunals of a foreign country, where in many places, public opinion throws in the way of the applicant for justice, in matters of this nature, insuperable obstacles. Of the many cases that might be referred to, in proof of the justice of this remark, one is that of John Smith, mate of the brig *Swiftsure*, who concealed and brought away with him a negro who was cook in a hotel where he was staying; upon which subject the undersigned wrote to the Secretary of State on the 19th of November, 1836, and now addresses him again in a separate communication. That the fears of the undersigned are not without foundation, is also evident from the excitement which this occurrence has produced in the public mind, from the language used by some of the public papers in relating it, and from the exertions that many persons have commenced making in favor of the revolted slaves of the "*Amistad*," for whose defence they have engaged some of the most able counsellors of Boston, New Haven, and New York.

In the islands above mentioned, the citizens of the United States have always met with a favorable reception and kind treatment. The Spanish Government, for the protection of their property, would immediately accord the extradition of any slaves that might take refuge there from the southern States. Being itself exact in the observance of treaties, it claims the more justly the execution of them, and a reciprocal good correspondence, from a nation, the ally and neighbor of Spain, to whom so many proofs have been afforded of the high degree in which her friendship is esteemed.

The undersigned requests Mr. Forsyth, the Secretary of State of the United States, to submit this note to the consideration of the President; and takes this opportunity of renewing to him the assurances of his distinguished consideration.

A. CALDERON DE LA BARCA.

Hon. J. FORSYTH,
Secretary of State.

Mr. Forsyth to Mr. Calderon.

DEPARTMENT OF STATE,
Washington, September 16, 1839.

SIR: I have the honor to acknowledge the receipt, at this department, of your note of the 6th instant, regarding the case of the Spanish schooner

"Amistad" and cargo, together with the negroes found on board that vessel. Your letter was immediately forwarded to the President of the United States for his consideration, and no time will be needlessly lost, after his decision upon the demand it prefers shall have reached me, in communicating to you his views upon the subject.

Accept, sir, the renewed assurance of my high consideration.

JOHN FORSYTH.

DON ANGEL CALDERON DE LA BARCA, &c.

Mr. Calderon to Mr. Forsyth.

[TRANSLATION.]

New York, September 17, 1839.

SIR: I have just had the honor to receive your letter of the 16th instant, acknowledging the receipt of my note of the 6th, relative to the Amistad, and I hasten to inform you of it; at the same time repeating the assurances of my high consideration.

A. CALDERON DE LA BARCA.

To the HON. J. FORSYTH,
Secretary of State.

Mr. Forsyth to Mr. Calderon.

DEPARTMENT OF STATE,
Washington, September 23, 1839.

SIR: In the examination of the case of the Spanish schooner "Amistad," the only evidence at present within reach of this department is that presented by the ship's papers, and the proceedings of the court of inquiry held by a district judge of Connecticut, on board the schooner, at the time the negroes in whose possession she was found were imprisoned for the alleged murder of the captain and mate of the vessel. If you have any other authentic documents relating to the question, or evidence of facts which can be useful to a proper understanding of it, I have the honor to request, by the direction of the President, that you will communicate them to me with as little delay as practicable.

I avail myself of the occasion to renew to you the assurance of my high consideration.

JOHN FORSYTH.

DON A. CALDERON DE LA BARCA, &c., &c., &c.,
New York.

Mr. Calderon to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, September 29, 1839.

SIR: At the very hour in which I was about to embark in the steamboat

Albany, for the purpose of placing my credentials in the hands of his excellency the President, and of presenting to him my successor Don Pedro de Alcantara Arguiz, I received your letter of the 23d instant, in which you ask me whether I possess any other authentic documents relative to the case of the schooner *Amistad*, besides those found on board the said vessel, and now deposited in the court of Connecticut, which takes cognizance of that affair.

In reply, I hasten to assure you, now that I have time for that purpose, although the official conduct of that case belongs to Señor Arguiz, that there are not in the possession of the legation of Her Majesty any documents besides the declaration on oath of Montes and Ruiz ; inasmuch as the papers of the vessel, of the lawfulness of which there appears to be no reason for doubt, are in the court above mentioned ; and there is as yet not time enough for the news of the occurrence to have reached Havana.

I entreat you, sir, to excuse my involuntary delay in replying to you, and I have the honor of repeating to you the assurances of my high consideration and personal esteem.

A. CALDERON DE LA BARCA.

Honorable JOHN FORSYTH,
Secretary of State.

Chevalier de Arguiz to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, October 3, 1839.

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, has the honor of commencing his official correspondence with you, sir, by soliciting an act of justice, which not being in any way connected with the principal question as yet remaining unsettled by the cabinet, relative to the negroes found on board the schooner *Amistad* on her arrival on these coasts, he does not doubt will be received by you in the manner which he has every reason to expect, from the circumstance that all preceding acts of the department under your charge have been dictated by the principles of rectitude and friendly reciprocity.

Her Majesty's vice-consul at Boston, under date of the 24th of September last, says, among other things :

"As it appears from the papers of the schooner that she, as well as her cargo, are exclusively Spanish property, it seems strange that the court of New London has not yet ordered the delivery of one or both to the owners, if they are present, or to me, as their agent, born in that part of the Union, agreeably to the articles of the treaty now in force between the two countries. The delay in the delivery would not be of so much consequence to the proprietors, if the vessel did not require immediate repairs, in order to preserve her from complete destruction, and if it were not material that a large portion of the cargo should be sold on account of its bad condition."

In submitting to you, sir, this solicitation, which has been addressed by the said vice consul to the Spanish legation, the undersigned doubts not that you will see the propriety of it, and will obtain directions from the President, to the effect that the injuries which the persons represented by the vice-consul might otherwise sustain, may be lessened by means of a speedy determination of the question.

The undersigned avails himself of this occasion to offer you, sir, the assurances of his most distinguished consideration.

THE CAVALLEIRO PEDRO ALCANTARA ARGAIZ.

Hon. JOHN FORSYTH,

Secretary of State.

Mr. Forsyth to the Chevalier de Argaiz.

DEPARTMENT OF STATE,
Washington, October 24, 1839.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note addressed to him on the 22d instant, by the Chevalier de Argaiz, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, protesting against the arrest, and imprisonment at New York, of two Spanish subjects, Jose Ruiz, and Pedro Montes, and asking the interposition of the Executive in procuring their liberation, and indemnity for the losses and injury they may have sustained.

It appears from the documents accompanying the note of the Chevalier de Argaiz, that the two Spanish subjects referred to were arrested on process issuing from the superior court of the city of New York, at the suit of, and upon affidavits made by, certain colored men, natives of Africa, for the purpose of securing their appearance before the proper tribunal, to answer for wrongs alleged to have been inflicted by them upon the persons of said Africans; and, consequently, that the occurrence constitutes a simple case of resort by individuals against others to the judicial courts of the country, which are equally open to all without distinction, and to which it belongs exclusively to decide, as well upon the rights of the complainant to demand the interposition of their authority, as upon the liability of the defendant to give redress for the wrong alleged to have been committed by him. This being the only light in which the subject can be viewed, and the constitution and laws having secured the judicial power against all interference on the part of the Executive authority, the President, to whom the Chevalier de Argaiz's note has been communicated, has instructed the undersigned to state, that the agency of this Government to obtain the release of Messrs. Ruiz and Montes cannot be afforded in the manner requested by him. The laws of the State of New York, of which the constitution and laws of the United States and their treaties with foreign Powers form a part, afford to Messrs. Ruiz and Montes all the necessary means to procure their release from imprisonment, and to obtain any indemnity to which they may be justly entitled, and therefore would render unnecessary any agency on the part of this department for those purposes; but, inasmuch as the imprisonment of those persons connects itself with another occurrence which has been brought under the President's consideration, in consequence of a correspondence between the Spanish legation and this department, instructions (of which a copy is enclosed) have been given to the attorney of the United States for the district of New York to put himself in communication with those gentlemen, to offer them his advice (and his aid, if necessary) as to any measure which it may be proper for them to adopt to procure their release, and such indemnity as may be due to them, under our laws, for their arrest and detention.

The documents enclosed in the Chevalier de Argaiz's note are, agreeably to his request, herewith returned; and the undersigned avails himself of this occasion to renew to the Chevalier de Argaiz the assurance of his high consideration.

JOHN FORSYTH.

The Chevalier de ARGAIZ, &c., &c., &c.

The Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION.]

NEW YORK, November 5, 1839.

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, has the honor of acknowledging the reception of the note from the Secretary of State of the General Government of the Union, dated the 24th of October, in which that gentleman, in reply to one of the 22d of the same month, shows the reasons which induced the President to order information to be communicated to the undersigned that the Government could not act as the undersigned had requested, for the purpose of obtaining the liberty of the Spanish subjects Montes and Ruiz; but that, as the imprisonment of those persons was evidently connected with another occurrence, which had been submitted to the consideration of the President, in consequence of a correspondence between the Spanish legation and the Department of State, instructions (of which a copy was enclosed) had been given to the attorney of the United States for the district of New York, to the effect that he should offer to those persons his advice and assistance (if needed) with regard to the most proper means of obtaining their liberty.

Although this answer did not entirely satisfy the desire expressed by the undersigned in his note of October 22d, to which he was impelled by the sense of his duty and by the terms of existing treaties, yet he received it with pleasure and with thanks: with pleasure, because he saw that the Secretary of State did not refuse to admit the reasons which the undersigned had the honor to state in that note; and with thanks, because he saw that the sentiments which had urged him to request with warmth a prompt reply, had been kindly interpreted. The undersigned, in consequence, went immediately to New York, where he visited, on the 29th ultimo, the attorney of the United States, with whom he had a long conversation, which left him delighted with the affability and courtesy of Mr. Butler, although he did not have the happiness to remain satisfied as to the principal matter, as that officer of justice declared that he could find no other means of obtaining the liberty of Ruiz (Montes being already free) than by waiting the determination of the court or courts, against the jurisdiction of which the undersigned had already especially protested.

Considering that the Spanish Government has, just within these few days past, given to that of the United States a proof of the strictness with which it observes treaties, and of the respect which it bears to the jurisdiction of the courts of this country, by sending from Havana the original documents of the prosecution against Mr. Abraham Wendell, the captain of the brig Franklin, for maltreatment of his mate, William Bell; that the undersigned is well persuaded that what he has said to the Secretary of State, in the two conferences preceding his note of October 22d, and

the indications contained therein, would have been sufficient to convince one so enlightened and discriminating of the justice of his claim; that this persuasion has gained strength, from the circumstance that the Secretary of State has made no attempt in his answer to oppose those arguments, but has confined himself to endeavoring to explain the course of civil causes in the courts of this country, in order to show that the Government of the United States could not interfere in the manner in which Her Catholic Majesty's representative requested; it becomes necessary to advance further arguments, at the risk of being importunate.

It is allowed by the whole world that a court cannot take cognizance of crimes or *delinquencies* committed in other countries, or other jurisdictions, and under other laws, the application of which is not intrusted to it; as, also, that petitions or accusations of slaves against their masters cannot be admitted in a court. If, however, all this were not well known and established, does not the seventh article of the treaty of 1795 apply to this case? What says that article? It says that, in case an American citizen should contract debts or *commit offences* in the dominions of His Catholic Majesty, or a Spaniard in the United States, the proceedings for his arrest and all others against him shall be conducted in the manner already established, &c. &c. All of which, as the Spanish minister said in his note of the 22d, and also the circumstances above mentioned relative to the prosecution of Mr. Wendell, prove that neither of the two contracting parties could or wished to renounce their respective jurisdiction. And as the incompetence of the courts of the United States, with regard to this matter, is so clearly demonstrated, is there no power in the Federal Government to declare it so, and to interpose its authority to put down the irregularity of these proceedings, which the court is not competent to perform? It seems impossible that there should be no such power; but, unfortunately, there is none.

Her Catholic Majesty's envoy extraordinary and minister plenipotentiary, nevertheless, seeing that his previous protest did not produce the result which he expected, renews it now, declaring this Government responsible for the consequences which may grow out of this affair; and he asks the Secretary of State whether or not he possesses sufficient authority and force to carry into fulfilment the treaty of 1795? If he has not, then there can be no treaty binding on the other party.

The undersigned flatters himself that he will obtain a speedy reply, as required by the nature of the case and the rights of a Spanish subject, who is suffering an unjust and unlawful imprisonment; and he, at the same time, repeats to the Secretary of State the assurances of his most high consideration.

THE CHEVALIER DE ARGAIZ.

To the Hon. JOHN FORSYTH,
Secretary of State.

Acting Secretary of State to the Chevalier de Argaiz.

DEPARTMENT OF STATE,
Washington, November 22, 1839.

Upon the receipt of the note addressed, on the 5th instant, to this department, by the Chevalier de Argaiz, envoy extraordinary and minister plenipotentiary of Spain, in relation to the arrest of Mr. Ruiz, in a civil

suit against him before a court of law in New York, the undersigned, acting Secretary of State, transmitted, by order of the President, to the attorney of the United States for the district of New York, directions again to inquire into the circumstances of the case, and to report his opinion as to the authority of the United States Government to interfere in behalf of Mr. Ruiz, for the purpose of procuring his release from imprisonment, as requested by the Chevalier de Argaiz.

The undersigned, having received the report of the district attorney, hastens to communicate the enclosed copy of it to the Chevalier de Argaiz; and avails himself of this opportunity to offer him renewed assurances of his distinguished consideration.

A. VAIL,
Acting Secretary of State.

The Chevalier DE ARGAIZ, &c. &c. &c.

The Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION.]

WASHINGTON, November 26, 1839.

The new delay which the court in Connecticut has just granted, fixing the 7th of January next for the trial of the case of the schooner *Armistad*, places the undersigned envoy extraordinary and minister plenipotentiary of Her Catholic Majesty under the necessity of repeating to the Secretary of State of the General Government of the United States his former complaints.

To the first complaint, made by his predecessor, on the 6th of September last, nothing more than an acknowledgment of its receipt was thought necessary, which was made on the 16th of the same month. In the answers which the Secretary was pleased to give to the notes of the undersigned, of the 22d of October and the 5th of November last, that gentleman did not think proper to combat the arguments advanced. Those which the undersigned now proposes to present will be no less powerful, and he hopes will be such that the Secretary will not be able to deny their justice.

The undersigned has the honor to ask in what law, act, or statute, does the said court base its right to take cognizance of the present case?

There can be no doubt as to the reply: On no law, act, or statute. For, if any such existed, it is, or should be, anterior or posterior to the treaty of 1795. If anterior, it clearly became annulled, because a treaty is one of the superior laws of the State, or the treaty should never have been signed, or ratified, or sanctioned by the legislative bodies. If posterior to the treaty, the legislative bodies, in drawing it up, discussing it, and voting on it, must have seen that it was at variance with a subsisting treaty, which was already a law of the Union. All which serves to show that, in the existing state of the laws, this affair cannot and should not be decided by the common law, but by the international law.

The predecessor of the undersigned, resting no doubt upon this conviction, demanded, on the 6th of September last, the restitution of the schooner, with all her cargo; and, if the General Government of the Union had decided this matter of itself, (*gubernativamente*,) the owners would have soon availed themselves of the right allowed them by the

treaty, according to which the vessel and her goods, of *whatever nature they may be*, should be restored ; for they had been, as the 8th article says, forced in order to escape from enemies, (who kept them prisoners on board of the vessel herself) and there was, therefore, an urgent necessity to seek refuge and shelter on the coasts of the United States, where they should have been, agreeably to the stipulations of the same article, "received and treated with all humanity, and enjoy all favor, protection, and help ;" and where they were in no ways to be hindered from returning out of the said ports or roads, but to be allowed to remove and depart when and whither they pleased, without any let or hindrance.

Very different, however, have been the results ; for, in the first place the treaty of 1795 has not been executed, as the legation of Her Catholic Majesty has solicited ; and the public vengeance has not been satisfied, for be it recollected that the legation of Spain does not demand the delivery of slaves, but of assassins. Secondly, great injury has been done to the owners ; not the least being the imprisonment which Don Jose Ruiz is now undergoing, notwithstanding the complaints made on that subject, which, if not entirely disregarded, have at least not produced the favorable results which might have been expected ; and the dignity of the Spanish nation has thus been offended. With respect to which injuries, the undersigned will, on a proper occasion, use his right ; although no indemnifications can fully recompense for the evils, physical and moral, which the persecutions and vexations occasioned by fanaticism may cause to an honorable man.

Thus it appears that a court of one of the States of the confederacy has assumed the direction of an affair over which it has no jurisdiction ; that there can be no law, either anterior or posterior to the treaty, upon which a legal sentence can be based ; that this court, by the repeated delays which it orders, contributes to delay the satisfaction demanded by public justice ; and that, in consequence, the affair should only be determined by reference to international right, and, therefore, by the exercise of the power of the Government, (*gubernativamente* ;) that, for its determination, the treaty exists to which Spain appeals ; that, from the delay on this determination, have proceeded injuries requiring indemnification, to demand which the undersigned reserves the exercise of his right for a future occasion. The undersigned may, without indiscretion, declare that this must be the opinion of the cabinet, which, possessing already the necessary and even indispensable powers, may immediately act (*gubernativamente*) in this matter, in virtue of the actual state of the law, and without awaiting the decision of any court. Not to do so, may give rise to very complicated explanations with regard to reciprocity in the execution and fulfilment of treaties.

The undersigned flatters himself with the hope that his excellency the President will take into his high consideration this communication, to which the undersigned hopes for a speedy answer, as a new proof of the scrupulousness and respect with which this nation fulfils the treaties existing with other nations. If, contrary to this hope, the decision should not be such as the undersigned asks, he can only declare the General Government of the Union responsible for all and every consequence which the delay may produce. The undersigned avails himself of this opportunity to repeat to the Secretary of State the assurances, &c.

THE CHEVALIER DE ARGAIZ.

Hon. JOHN FORSYTH,
Secretary of State.

The Chevalier de Arguiz to Mr. Forsyth.

[TRANSLATION.]

WASHINGTON, November 29, 1839.

The undersigned received on the 22d instant, with the note from Mr. Vail, the acting Secretary of State, the copy of the opinion which had been asked from the attorney of the United States at New York, by order of the President.

Although the envoy extraordinary of Her Catholic Majesty does not intend to enter, at present, into a discussion (*polemica*) with regard to this affair, he cannot still do less than declare that he views the question of the imprisonment of Don Jose Ruiz in a very different light; and to demonstrate, at the same time, so far as reasoning will go, that the Government of the United States is bound to extend to the said Ruiz more favor, protection, and assistance, than it has as yet granted him, which has been no more than directing the abovementioned attorney to offer him his advice, (and assistance if there should be occasion;) that is to say, the Government has given him an attorney *gratis*, as all courts allow to those accused persons who, from want of means, cannot defend themselves. Taking this affair from its commencement, the situation of Ruiz on his arrival in the United States is to be considered. Having embarked in the schooner *Amistad*, at the port of Havana, for the purpose of carrying some negroes belonging to him to Guanaja, and being provided with the documents required by the law and the ordinances, he set sail on the 28th of June last; on the night of the 29th–30th of the same month, the negroes rebel; they assassinate the captain, and his cook, a negro man; two white sailors alone, of the crew, escape in the boat; Montes is wounded and ill-treated, though his life, as well as that of Ruiz, is spared, from the mere necessity on the part of the negroes to save themselves; and they are obliged to manage the vessel, which, instead of steering to the eastward, as the mutineers wished, they brought to the coasts of the United States; and a vessel belonging to the Union carries them into New London.

On their arrival in the United States, Montes and Ruiz claimed the protection allowed them by the international law; and the envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, Señor Calderon de la Barca, made a request to that effect to the Government of the Union, on the 6th of September last, based upon the provisions of the treaty of 1795.

This treaty, in its 8th article, says: "In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports, belonging to the other party, they shall be received and treated with all humanity, and enjoy all favor, protection, and help; and they shall be permitted to refresh, and provide themselves, at reasonable rates, with victuals and all things needful for the subsistence of their persons, or reparation of their ships, and prosecution of their voyage; and they shall no ways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance." Now, have Montes and Ruiz received in the United States "*all favor, protection and help*?" Have they not *been detained and hindered from returning out of the ports or roads of the United States*? Have they

been allowed to remove and depart when and how they pleased, without any let or hindrance? The prison of New York can answer all these questions.

It is in vain to say that the imprisonment of Montes and Ruiz has no connection with treaties, as it is in consequence of a civil prosecution. Who has set on foot this prosecution? The whole nation knows the prosecution has been set on foot legally by three men, who by their declaration that they had been sold in Africa, prove the state of slavery in which they were in that country. Now, if they were slaves in their own country, how do they come to be here in the enjoyment of civil rights? Moreover, a criminal accusation is now hanging over them; and in every civilized country the said rights would be always suspended with respect to persons lying under such accusations.

But even supposing these negroes to be in the United States competent to begin civil prosecutions; let the treaty of 1795 be opened, and in its 7th article it will be seen that, "in all cases of seizure, detention, or arrest for debts contracted, or offences committed, by any citizen or subject of the one party, within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceeding usual in such cases." If the delinquencies against which the negroes complain, and on account of which they are now prosecuting, have been really committed, they were committed before the negroes became masters of the schooner *Amistad*—that is to say, in the island of Cuba, or in its waters; and, therefore, according to the letter and the spirit of this stipulation, they should come under the jurisdiction of that island, and by no means under that of the courts of these States; and on this point it is that the undersigned differs entirely in opinion from the attorney of the United States for the district of New York.

The case of the imprisonment and Persecutions to which Señor Ruiz has been subjected has now been presented in a clear light. Señor Ruiz should, agreeably to the 8th article of the treaty, have found "favor, protection, and help" in the United States; and he found a prison, in which he has been suffering since the 17th of October last. *He was not to be detained or hindered in any way from returning out of these ports or roads*, but, on the contrary, *had the right to remove and depart whenever he pleased, without let or hindrance*. Now, is it no *hindrance* to set on foot a civil prosecution against him, when it is well known that the plaintiffs have no part in it? Is not an imprisonment, or the bail that is required, a *hindrance*?

And does the General Government of the Union, while knowing that "the imprisonment of those persons connects itself with another occurrence which has been brought under the President's consideration, in consequence of a correspondence between the Spanish legation and the Department of State," conceive that it has done its duty by giving instructions to the attorney of the United States for the district of New York to put himself in communication with Ruiz, and to offer him his advice (and his aid, if necessary) as to any measure which it may be proper for him to adopt in order to procure his release, which, as I have before observed, amounts to nothing more than giving him an attorney gratis?

The representative of Her Catholic Majesty is so far from being satisfied with this resolution, that he cannot avoid declaring that, according to his imperfect knowledge and understanding, the General Government is bound, in compliance with the stipulations of the treaty, to defend the said Ruiz officially, by giving for him the bail required, and setting him at liberty, so as to place him in the position assured to him by the treaty of 1795. This

the undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty now demands in virtue of the letter and sense of the stipulations of that treaty.

The undersigned renews to Mr. Forsyth, Secretary of State of the General Government of the Union, the assurances of his high consideration.
THE CHEVALIER DE ARGAIZ.

Hon. JOHN FORSYTH,
Secretary of State.

Mr. Forsyth to the Chevalier de Argaiz.

DEPARTMENT OF STATE,
 Washington, December 12, 1839.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of two notes addressed to him on the 1st and 26th of last month by the Chevalier de Argaiz, envoy extraordinary and minister plenipotentiary of Spain; the one complaining of delay in the decision of the Government of the United States on his application for the surrender of the schooner *Amistad*, her cargo, and the negroes found on board; and the other, claiming the agency of the Executive in the defence of Don Jose Ruiz, in a civil suit against him, now pending before a court of law in the city of New York, and the security of the United States in a bail-bond for his release from arrest in the suit referred to.

In the note which the undersigned addressed to Mr. Calderon de la Barca on the 16th September last, he stated that the application for the delivery of the "*Amistad*," and the property found on board, had been submitted for the consideration of the President, and that his decision would as soon as received, be communicated to the Spanish legation. In another note of the 23d of the same month, calling for evidence deemed useful in the examination of the questions arising from the case of the "*Amistad*," the minister of Spain might have found a proof that his application was receiving all the notice and respect which was due to the source from which it emanated; and it was hoped that, in the various conversations which have since taken place with the Chevalier de Argaiz at this department, on the same subject, he would have discovered additional evidence of the desire of the United States Government to do justice to the demand and representations addressed to it in the name of that of Spain, as fully and as promptly as the peculiar character of the claim admitted. From the repeated communications of the Chevalier de Argaiz, pressing for the disposal of the question; from his reiterated offer of suggestions as to the course by which he deems it incumbent upon this Government to arrive at a final decision; and from the arguments in support of those suggestions, which the undersigned does not perceive the utility of combating at the present stage of the transaction; the Government of the United States cannot but perceive with regret that the Chevalier de Argaiz has not formed an accurate conception of the true character of the question, nor of the rules by which, under the constitutional institutions of the country, the examination of it must be conducted; nor a correct appreciation of the friendly disposition towards Her Catholic Majesty's Government, with which that examination was so promptly entered upon. In connection with one of the points in the Chevalier de Argaiz's last note,

the undersigned will assure him that, whatever be, in the end, the disposal of the question, it will be in consequence of a decision emanating from no other source than the Government of the United States; and that, if the agency of the judicial authority shall have been employed in conducting the investigation of the case, it is because the judiciary is, by the organic law of the land, a portion, though an independent one, of that Government.

As to the delay which already has attended, and still may attend, a final decision, and which the Chevalier de Argaiz considers as a legitimate subject of complaint, it arises from causes which the undersigned believes that it would serve no useful purpose to discuss at this time, further than to say that they are beyond the control of this department, and that it is not apprehended that they will affect the course which the Government of the United States may think it fit ultimately to adopt.

The undersigned indulges the hope that, upon a review of the circumstances of the case, and of the questions it involves, the Chevalier de Argaiz will agree with him in thinking that the delay which has already occurred is not more than commensurate with the importance of those questions; that such delay is not uncommon in the proceedings and deliberations of Governments desirous of taking equal justice as the guide of their actions; and that the caution which it has been found necessary to observe in the instance under consideration, is yet far from having occasioned such procrastination as it has been the lot of the United States frequently to encounter in their intercourse with the Government of Spain.

With regard to the imprisonment of Don Jose Ruiz, it is again the misfortune of this Government to have been entirely misapprehended by the Chevalier de Argaiz, in the agency it has had in this, an entirely private concern of a Spanish subject. It was no more the intention of this department, in what has already been done, to draw the Chevalier de Argaiz into a polemical discussion with the attorney of the United States for the district of New York, than to supply Don Jose Ruiz, *gratis*, with counsel in the suit in which he had been made a party. The offer made to that person of the advice and assistance of the district attorney, was a favor—an entirely gratuitous one—since it was not the province of the United States to interfere in a private litigation between subjects of a foreign state, for which Mr. Ruiz is indebted to the desire of this Government to treat with due respect the application made in his behalf in the name of Her Catholic Majesty, and not to any right he ever had to be protected against alleged demands of individuals against him or his property.

And in communicating to the Chevalier de Argaiz the legal opinion of the district attorney, this department had no other object or expectation than to produce in his mind, by arguments founded upon the laws both of this country and of Spain, a conviction that this Government can no more grant the request set up in behalf of Don Jose Ruiz, than it could undertake to decide upon the legality of the claim preferred against him by the plaintiffs in the suit which occasioned his imprisonment.

In support of his application for Executive intervention in the liberation of Don Jose Ruiz, the Chevalier de Argaiz quotes the 7th article of the treaty of 1795 between the United States and Spain; and then puts the following questions, which the undersigned will answer by stating the facts as they have come to his knowledge:

Have Messrs. Montes and Ruiz received in the United States "all favor, protection, and help?"

Have they been detained, or not ?

Have they, or not, in any manner been prevented from leaving the ports or roads of the United States ?

Have they been allowed to remove or depart when and as they pleased, without any let or hindrance ?

Messrs. Ruiz and Montes were first found near the coast of the United States, deprived of their property and of their freedom, suffering from lawless violence in their persons, and in imminent and constant danger of being deprived of their lives also. They were found in this distressing and perilous situation by officers of the United States, who, moved towards them by sympathetic feeling, which subsequently became, as it were, national, immediately rescued them from personal danger, restored them to freedom, secured their oppressors that they might abide the consequences of the acts of violence perpetrated upon them, and placed under the safeguard of the laws all the property which they claimed as their own, to remain in safety until the competent authority could examine their title to it, and pronounce upon the question of ownership, agreeably to the provisions of the 9th article of the treaty of 1795.

From the moment of their liberation, they were left perfectly free to remain in the United States, to visit any part of the country, or to depart from it, without let or hindrance, as their business or inclination might suggest. Their property was under the protection of this Government, and its authority acknowledged by the legation of Her Catholic Majesty ; and if they chose to continue in the State into which they were first conducted, or to travel into other States, they remained under the ordinary protection of the laws of the United States, the benefits of which have not been, and will not be, denied to them. And in proof of this, one of them, Don Pedro Montes, is no longer within American jurisdiction.

All the stipulations in the 7th article of the treaty have been fulfilled by the agents of the United States, in all that regards the personal rights of those two Spanish subjects, with a promptitude, fidelity, and kindness, in which they were supported and approved by public sentiment, so far as it lay in their power to enforce them ; and no cause of dissatisfaction would have arisen in that respect, had they not deferred availing themselves of their freedom to leave the country until arrested, at the suit of individuals, alleging against them private claims, which constitutes, in the eye of the law of the land, liabilities ; the extent and validity of which can only be determined by a court of competent jurisdiction. To such a court, and for such a purpose, the plaintiffs have resorted ; and if the proceedings of that court have been according to law, and the same as if the parties defending were citizens of the United States, nothing is perceived in those proceedings which can be justly made a subject of complaint against the Government of the United States, under existing treaties. Among the powers within the competency of the court before which the case is pending, is that of releasing the defendant from actual imprisonment, upon his giving the usual security, not for the payment of the damages claimed by the plaintiffs, but merely for his appearance to abide the decision of the court. If Mr. Ruiz, relying upon other protection, has declined availing himself of the only one which the law provides and places within his own reach, the hardship he suffers, and of which the Chevalier de Argaiz complains in his behalf, is in some degree voluntary, and can only be made to cease when he shall himself apply the proper remedy, or when the tribunal shall, by due course of legal proceedings, have arrived at a judgment, which the undersigned has no doubt will ul-

timately answer all the demands of justice. If the proceedings against Mr. Ruiz shall be found to have been unwarranted by the existing law, all the meddling persons who can be shown to have been parties to his imprisonment are answerable to him, by the laws of the country; and proper remuneration will be, no doubt, obtained, if he chooses to resort to the tribunals to enforce his claims upon them.

The undersigned cannot conclude this communication without calling the attention of the Chevalier de Argaiz to the fact, that, with the single exception of the vexatious detention to which Messrs. Montes and Ruiz have been subjected in consequence of the civil suit instituted against them, all the proceedings in the matter, on the part of both the executive and judicial branches of the Government, have had their foundation in the assumption that those persons alone were the parties aggrieved; and that their claim to the surrender of the property was founded in fact and in justice. This circumstance alone, independently of those above stated, should, in the opinion of the undersigned, have been sufficient to convince the Chevalier de Argaiz that the condition of Messrs. Ruiz and Montes had, like the interposition of Her Catholic Majesty's Government in their behalf, found every proper degree of favor and consideration at the hands of the United States Government.

The undersigned avails himself of the occasion to renew to the Chevalier de Argaiz assurances of his distinguished consideration.

JOHN FORSYTH.

The Chevalier DE ARGAIZ, &c.

The Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION.]

WASHINGTON, December 25, 1839.

The undersigned has the honor to acknowledge the receipt of the note addressed to him under date of the 12th instant, by the Secretary of State of the Government of the Union, to which it would be superfluous (*ocioso*) to reply, inasmuch as the Secretary of State does not seem to have considered it requisite, in the present situation of the affair, to combat the arguments adduced by the undersigned. The delicacy of the undersigned does not, however, allow him to pass over (*desoir*) certain insinuations, (remarks) contained in the said note; and it will, perhaps, be difficult for him to avoid adducing some new argument in support of his demands.

Mr. Forsyth's answer to the demands of the undersigned may be considered as referring, first, to the business of the demand for the delivery of the schooner *Amistad*; and, secondly, to the actual situation of Don Jose Ruiz.

With regard to the first subject, Mr. Forsyth recalls to mind what he said to this legation in his communications of the 16th and 23d of September last; and, referring to these, he says that "the minister of Spain might have therein found a proof that his application was receiving all the notice and respect due to the source from which it emanated; and it was hoped that the Chevalier Argaiz would, in the various conversations held with him at this department on the same affair, have discovered additional evidence of the desire of the United States to do justice to the de-

mand and representation addressed to them in the name of her Catholic Majesty."

The undersigned regrets exceedingly that the Secretary of State should have already forgotten that, since the 6th of September, the Spanish legation, confiding in the goodness of its cause, and on the high opinion which it entertains of the impartial justice of the Government of the United States, took no other measure whatsoever, but even, to a certain extent, ran the risk of subjecting itself to the charge of neglecting the interests of Spanish subjects. The undersigned did, indeed, on the 3d of October, request that the cargo of the schooner should be delivered to him, as it might easily be injured; but he took care, at the same time, to say in his note that "he solicited an act of justice, which did not at all interfere with the main question, as yet undetermined by the cabinet, relative to the negroes who were found in the schooner;" all which clearly proves that the undersigned would not have troubled the Government of the Union with his urgent demands, if the two Spaniards (who, as the Secretary of State, in his note of the 12th, says "were found in this distressing and perilous situation by officers of the United States, who, moved by sympathetic feelings, which subsequently became national") had not been the victims of an intrigue, as accurately shown by Mr. Forsyth, in the conference which he had with the undersigned on the 21st of October last.

This explanation, which the undersigned has considered indispensable, will doubtless serve again to convince the Secretary of State of the desires which animated Señor Argaiz until the 19th of October last, and which he was obliged with regret to relinquish, in consequence of the imprisonment of the two Spaniards above mentioned.

The Secretary of State, however, says that "he cannot but perceive with regret that the Chevalier de Argaiz has not formed an accurate conception of the true character of the question, nor of the rules by which, under the constitutional institutions of this country, the examination of it must be conducted." Possibly the undersigned may not have formed such an accurate conception of this affair, since it has been carried within the circle of legal subtleties, as he has not pursued the profession of the law; but he is well persuaded that, if the crew of the *Amistad* had been composed of white men, the court, or the corporation to which the Government of the Union might have submitted the examination of the question, would have observed the rules by which it should be conducted under the constitutional institutions of the country, and would have limited itself to the ascertainment of the facts of the murders committed on the 30th of June; and the undersigned does not comprehend the privilege enjoyed by negroes, in favor of whom an interminable suit is commenced, in which every thing is deposed by every person who pleases; and, for that object, an English doctor, who accuses the Spanish Government of not complying with its treaties, and calumniates the Captain General of the island of Cuba, by charging him with bribery.

The undersigned with pleasure receives the assurance given to him by the Secretary of State, in a subsequent part of the note, "that, whatever may be the final settlement of the question, it will be in consequence of a decision emanating from the Government, and not from any other source;" and he doubts not such decision will be conformable with the opinion which was confidentially communicated to him at the Department of State on the 19th of November, as founded on that of a learned lawyer, and which he was assured had been adopted by the cabinet.

The undersigned, as he has already declared, would be, and is, fully

disposed not to complain of the delay which has occurred, and, if necessary, to "*think it commensurate with the importance of the questions.*" If the causes of dissatisfaction consequent upon this delay had not exacerbated the question, or, rather, the dispositions of the undersigned as well as of the administration, which the undersigned hopes to see restored to their former harmony, if he can succeed in convincing the Secretary of State that nothing but a sense of duty, which he considers imperious, would have excited him to be at times importunate, while in his personal character, he is more prudent and conciliatory.

The undersigned cannot and has no power to remove the delays to which the claims of the United States are subjected in Madrid. The decision with regard to the demand lately made by the sloop of war Boston, at Havana, was not, however, thus delayed. The communication addressed by the Captain General of that island to the Government was made on the 14th of January last, and the documents of that trial have now been in the hands of this Government about two months; and, as the undersigned learns, though he cannot assert it positively, the circumstances which led to that trial were committed in that port itself. If they were there committed, the courts of Cuba would, according to the opinion of learned lawyers, have the right to take cognizance of them; and if they were so committed, the Government of Her Catholic Majesty has doubtless preferred renouncing this right, and thus giving to that of the United States a new proof of its disposition to strengthen farther the bonds of friendship which fortunately unite the two nations.

The Secretary of State, in his abovementioned note, then goes on to treat the second part of the subject—that is to say, the seizure of Messrs. Ruiz and Montes; and alleges that the assistance given by the attorney of the United States for the district of New York was a favor entirely gratuitous, afforded to Ruiz in consequence of the desire, on the part of the government of the Union, to give due respect to the petition in his favor made in the name of Her Catholic Majesty. The undersigned has endeavored to show that the Government of this Union was under the obligation to place Ruiz in such a position as should assure the fulfilment of the 8th article of the treaty of 1795. Unfortunately, the reasons assigned with this view have not been sufficiently powerful to produce conviction in the mind of the Secretary of State; nor is the undersigned more convinced by the declaration of the Secretary of State, that "no cause of dissatisfaction would have arisen in this affair, had they not deferred availing themselves of this liberty, to leave the country until the moment of their arrest," &c. Certainly they would not have remained in the country so long; and they would have abandoned it, to the injury of their interests, had they been able to foresee that, though respecting the laws and conducting themselves honorably, they were not exempt from the persecutions of an atrocious intrigue, (and the undersigned is not the first who has thus styled this persecution,) as if they could have imagined that, for supposed delinquencies committed in their own country, or under their own national flag, they would have been confined in a prison, or required to give enormous bail. They, however, believed the contrary, (what few Spaniards can now persuade themselves of;) that, while infringing no law or police regulation, they would enjoy their individual liberty in this republic. And, sir, who will not be shocked at the complaint preferred against them? By whom is it preferred? The undersigned, in addition to all that he has said on this subject, will now add, that the complainants (if the negroes be the complainants) may be considered,

morally and legally, as not being in the United States. They are morally and legally not in the United States, because the court of Connecticut has not declared whether or not it is competent to try them. If it should declare itself incompetent, it declares that they are under the cover of the Spanish flag; and, in that case, they are physically under the protection of a friendly Government, but morally and legally out of the territory and jurisdiction of the United States; and, so long as a doubt remains on this subject, no Judge can admit the complaint. If this argument be of any value with the Secretary of State of the Government of the Union, the undersigned entreats him to prevail on the President to cause a protest, founded upon this argument, to be officially addressed to the court of New York.

The undersigned flatters himself with the hope that the Secretary of State of the Union will conceive how painful it is to him to trouble that gentleman again about this affair, and will also see that he is under the obligation to do so. If the persecution under which Señor Ruiz is suffering were the consequence of his own faults, if his conduct in these United States had been such as to render his arrest just, the undersigned would have abandoned him to his own means of defence, and would never have intruded upon the attention of the Secretary of State.

But unfortunately, this affair is so closely allied to that of the *Amistad*, that the undersigned cannot, without a heavy responsibility, refrain from doing whatever his sense of duty dictates.

The undersigned avails himself of this opportunity to repeat to the Secretary of State of the Federal Government of the Union the assurances of his very high consideration.

THE CHEVALIER DE ARGAIZ.

Hon. JOHN FORSYTH,
Secretary of State.

The Chevalier de Argaiz to Mr. Forsyth.

[TRANSLATION.]

WASHINGTON, *December 30, 1839.*

SIR: In the conversation which I had with you on the morning of the day before yesterday, you mentioned the possibility that the court of Connecticut might, at its meeting on the 7th of January next, declare itself incompetent, or order the restitution of the schooner *Amistad*, with her cargo, and the negroes found on board of her; and you then showed me that it would be necessary for the legation of Her Catholic Majesty to take charge of them as soon as the court should have pronounced its sentence or resolution; and, although I had the honor to state to you that this legation could not possibly transfer the said negroes to Havana, still it appears proper for me now to declare that—

Considering that the schooner *Amistad* cannot make a voyage, on account of the bad condition in which she is, of her being entirely without a crew;

Considering that it would be difficult to find a vessel of the United States willing to take charge of these negroes, and to transport them to Havana; and, also, that these negroes have declared before the court of Connecticut that they are not slaves, and that the best means of testing the truth of their allegation is to bring them before the courts of Havana:

Being at the same time desirous to free the Government of the United States from the trouble of keeping the said negroes in prison, I venture to request you to prevail upon the President to allow to the Government of Her Catholic Majesty the assistance which it asks under the present circumstances from that of the United States, by placing the negroes found on board of the said schooner, and claimed by this legation, at the disposition of the Captain General of the island of Cuba, transporting them thither in a ship belonging to the United States. Her Catholic Majesty's Government, I venture to assert, will receive this act of generosity as a most particular favor, which would serve to strengthen the bonds of good and reciprocal friendship now happily reigning between the two nations.

I, for my own part, confiding in your kindness, do not hesitate to declare that I shall be most happy to be able to announce to my Government this new proof of friendship, for which I now, by anticipation, give thanks.

I repeat to you, sir, the assurances of my distinguished consideration,
THE CHEVALIER DE ARGAIZ.

HON. J. FORSYTH, *Secretary of State.*

Mr Forsyth to the Chevalier de Argaiz.

DEPARTMENT OF STATE,
Washington January 6, 1840.

SIR: I have the honor to acknowledge the receipt of your note of the 20th ultimo, in which, anticipating an early decision by the circuit court of Connecticut in the case of the schooner "Amistad," you request that as a particular favor to the Spanish Government, the President may be pleased, in the event of the decision of the court being favorable to the application of the Spanish legation for the surrender of the vessel, and the negroes and property found on board, to place the negroes at the disposition of the Captain General of Cuba, and to grant the use of a vessel of the United States for the purpose of conveying them to that island.

Having laid your note before the President, I am instructed to state to you that, in the event of the decision of the circuit court of Connecticut, in the case referred to, being such as anticipated, the schooner "Amistad," which you represent as not being in a condition to go to sea, will, with such goods as were found on board, be delivered to any persons whom you may designate; and that, animated by that spirit of accommodation and reciprocal convenience which the President is anxious should ever characterise the relations between the two Governments, he will cause the necessary orders to be given for a vessel of the United States to be held in readiness to receive the negroes and convey them to Cuba, with instructions to the commander to deliver them to the Captain General of the island. The President has the more readily been inclined to accede to your request in this particular, on account of one of the leading motives which prompted you to make it: that the negroes, having asserted before the court of Connecticut that they are not slaves, may have an opportunity of proving the truth of their allegation before the proper tribunals of the island of Cuba, by whose laws alone, taking in connection with circumstances occurring before the arrival of the negroes in the Unit-

ed States, the question of their condition can be legally decided. With a view to facilitate any steps which the authorities of Cuba may think fit to institute in the matter, by unquestionable testimony, as to the circumstances attending the arrival of the negroes in the United States, and the proceedings in our courts consequent thereon, the President has thought proper further to order that a complete record of those proceedings be prepared and forwarded to the Captain General of Cuba, by the officer who shall have charge of the negroes ; and that Lieutenants Gedney and Meade, by whose agency, chiefly, those people were brought within our jurisdiction, shall proceed in the same vessel, for the purpose of offering to the local authorities their testimony, and the benefit of the knowledge they possess of the circumstances of the case. To aid those officers in the performance of the duty thus to be assigned to them, I request that you will furnish them, through this department, with letters of introduction to such of the colonial authorities as you may think proper ; and inasmuch as that for the purpose of their intended visit to Cuba they may be withdrawn from the discharge of their ordinary duties, I request further that you will express to the proper quarter the desire of the President that, if their testimony shall appear useful or important, it may be taken with as little delay as practicable, that they may be enabled soon to return to the United States.

Be pleased to accept the renewed assurances of my distinguished consideration.

JOHN FORSYTH.

The Chevalier DE ARGAIZ, &c., &c., &c.

Mr. Holabird to Mr. Forsyth.

[EXTRACT.]

DISTRICT OF CONNECTICUT,

Office of District Attorney, Winchester, September 5, 1839.

SIR : You are undoubtedly apprised of the fact that the marshal of this district has in custody the Spanish schooner "Amistad," with her cargo and 41 blacks, supposed to be slaves. A court of inquiry has been holden by the district judge of this district on board the schooner, and the blacks indicted for the murder of the captain and mate. It appears from the evidence that the blacks (slaves) were taken on board the schooner at a port in the island of Cuba, to transport to another port in the same island ; when from seven to ten leagues out, they murdered the captain and mate, and took possession of the schooner, (27th or 28th of June.) On the 26th of August last they were discovered off Montauk point by the crew of the surveying brig Washington, commanded by Lieutenant Gedney, and by him boarded and brought into the port of New London, in this district. The blacks were committed, and are now in the jail at New Haven. The schooner and cargo have been libelled by Lieutenant Gedney and crew for salvage. The next term of our circuit court sits on the 17th instant, at which time I *suppose* it will be my duty to bring them to trial, unless they are in some other way disposed of. Should you have any instructions to give on the subject, I should like to receive them as soon as may be.

* * * * *

I am, very respectfully, your obedient servant,

W. S. HOLABIRD,

United States District Attorney.

HON. JOHN FORSYTH, *Secretary of State*

Mr. Holabird to Mr. Forsyth.

[EXTRACTS.]

"HARTFORD, (CONN.) September 9, 1839.

"SIR: I wrote you a few days since on the subject of the *blacks* taken on board the Spanish schooner 'Amistad.' Since then I have made a further examination of the law on the subject of the jurisdiction of our courts, which has brought me fully to the conclusion, that the courts neither of this nor of any other district in the United States can take cognizance of any offence they have committed, as the offence by them committed was done and committed on board a vessel belonging exclusively to citizens of a foreign State, on the high seas, and on and against subjects of a foreign State: and they (the blacks) not being citizens of the United States, the vessel having a national character at the time the offence was committed. I refer you to the case of the United States *vs.* Palmer *et al.*, 3 Wheat., p. 610; United States *vs.* Pirates, 5 Wheat., p. 195; and the more recent case of the United States *vs.* Henry Kessler, Baldwin, C. C. Rep. 15.

"I would respectfully inquire, sir, whether there are no treaty stipulations with the Government of Spain that would authorize our Government to deliver them up to the Spanish authorities; and if so, whether it could be done before our court sits?"

Mr. Forsyth to Mr. Holabird.

DEPARTMENT OF STATE,

Washington, September 11, 1839.

SIR: Since the receipt of your letter of the 5th instant, relative to the case of the Spanish schooner "Amistad," brought into the port of New London on the 26th ultimo, by Lieutenant Gedney, of the surveying brig Washington, a communication has been addressed to this department by the minister of Her Catholic Majesty, claiming the vessel, cargo, and blacks on board, as Spanish property, and demanding its immediate release. Mr. Calderon's application will be immediately transmitted to the President for his decision upon it, with which you will be made acquainted without unnecessary delay. In the mean time you will take care that no proceeding of your circuit court, or of any other judicial tribunal, places the vessel, cargo, or slaves beyond the control of the Federal Executive.

I am, sir, your obedient servant,

JOHN FORSYTH.

WM. S. HOLABIRD, Esq.,

United States Attorney for the district of Conn., Winchester.

Mr. Holabird to Mr. Forsyth.

DISTRICT OF CONNECTICUT,

Circuit Court, Hartford, September 21, 1839.

SIR: Your instructions on the subject of the negroes brought in in the Amistad was duly received on the day the session of the court com-

menced, and the contents thereof communicated to the court. As the court did not charge the grand jury at the opening of the court, I thought it my duty, and deemed it, as the matter stood, advisable to file bills of indictment against the negroes, and did so, for the murder of the captain and cook of the schooner, and also for piracy; also, with a view of carrying out your instructions, filed a libel in the district court against the negroes, in behalf of the United States, averring the fact that Her Catholic Majesty the Queen of Spain had demanded of the Government the surrendering, &c.; and also alleging that they were imported in violation of the law of 1819, prohibiting the importation of negroes from Africa, &c.; praying the court to decree that the marshal hold them subject to the order of the Federal Executive on the *one* claim or the *other*, as the facts should be found and warrant. Dons Pedro Montes and Jose Ruiz have also filed claims for such portions of the negroes and cargo as respectively belonged to them; the Spanish consul also filed a claim in behalf of the representatives of Captain Ferrer, deceased, for the schooner and part of the cargo. A writ of *habeas corpus* was then prayed out in this court, in behalf of the negroes, by Tappan, &c. The grand jury, after two days of investigation, came into court with a finding of facts, to wit: That the schooner was owned by Captain Ferrer, a Spanish subject; sailed from Havana for the port of Guanaja, in the island of Cuba; third day out, the negroes murdered the captain and cook, and took possession of the schooner, &c.; and requested the court to charge them on the law, applicable to that state of facts. The court charged that they had jurisdiction of any offence they (the negroes) may have committed on board that vessel.* The *habeas corpus* has been under discussion the last two days. They take the ground that the district court has not jurisdiction; that the Federal Executive is not authorized to surrender the blacks, under the treaty stipulations with Spain, nor as fugitives from justice, under international law. The court probably entertain doubts, as they have requested the case re-argued. The court will probably decide the question on Monday next.

I hope, sir, in case the Executive makes any order on the subject of the negroes, that you will give me early notice of it.

I am, sir, very respectfully, your obedient servant, in haste,

W. S. HOLABIRD,
United States District Attorney.

Hon. JOHN FORSYTH,
Secretary of State.

* It was exactly the reverse. Judge Thompson stated that no criminal offence had been committed by the Africans cognizable by the Courts of the United States. "If," said he, "the offence of murder has been committed on board a foreign vessel, with a foreign crew and with foreign papers, this is not an offence against the United States. It is an offence against the laws of the country to which the vessel belonged. The courts of the United States have, in such cases, no jurisdiction—but if the offence be against the law of nations this court would have jurisdiction. A murder committed, as in the case of the *Amistad*, is not a crime against the law of nations, connected as it is with the slave trade." This extract is from the opinion of Judge Thompson, reported for the newspapers and extensively published at the time. The judge, after perusing this letter of Mr. Holabird, told the writer of this note that he had been made to say in it precisely the reverse of what he did say, and that his opinion was very correctly reported in the papers from which the above quotation is an extract.

Mr. Forsyth to Mr. Holabird.

DEPARTMENT OF STATE,
Washington, September 23, 1839.

SIR : It is necessary to a just decision on the various points presenting themselves for the President's consideration, in the case of the Spanish schooner "Amistad," that this department should be furnished with a copy of the ship's papers, together with a transcript of the proceedings of the court of inquiry held by the district judge on board the vessel, to which you refer in your letter of the 5th instant, and on which the blacks were imprisoned for the alleged murder of the captain and mate. I have, therefore, to request that you will transmit to me, with as little delay as practicable, copies of the papers, and of the evidence aforementioned.

I am, sir, your obedient servant,

JOHN FORSYTH.

W. S. HOLABIRD, Esq.,

U. S. Attorney for the Dist. of Conn., Hartford.

Mr. Holabird to Mr. Forsyth.

DISTRICT OF CONNECTICUT,
Office of District Attorney, Winchester, October 13, 1839.

SIR : Yours of the 23d ultimo, requesting copies of the papers of the "Amistad," together with a transcript of the proceedings of the court of inquiry held by the district judge on board the schooner, did not reach me until the 7th instant ; since which time I have used every reasonable endeavor to possess myself of the papers of said schooner, without yet being able to obtain them, they having been retained by Jose Ruiz. I hope soon to be able to comply with your request.

The facts regarding the matter were not as fully disclosed at the court of inquiry as they afterwards were before the grand jury, at the circuit court.

On the 22d instant, in pursuance of the order of the court, I intend to make a particular examination of the place where the schooner lay when taken possession of by Lieutenant Gedney.

I am, sir, your obedient servant,

W. S. HOLABIRD,
U. S. District Attorney.

Hon. JOHN FORSYTH, *Secretary of State.*

Mr. Holabird to Mr. Forsyth.

NEW HAVEN, November 5, 1839.

SIR : I herewith send you copies of the papers found on board the Spanish schooner Amistad at the time she was taken. Also a copy of the first warrant on which the blacks were committed.

You will find, by reference to my several letters written you since the commencement of the United States circuit court, on the 17th day of September last, an account of the proceedings which have been had on the matter. As a final decision is to be had on the third Tuesday of instant November, allow me to suggest, that, if there is any action to be

had on the part of the Government, with reference to the blacks, it is important that we be informed, either officially or unofficially, before the session of the court. As directed by the court, I have made an examination of the place where the Amistad lay at the time she was taken, and find her lying *clearly* and *decidedly* upon the high seas. She lay a little withinside of Montauk Point, in $3\frac{1}{2}$ to 4 fathoms water, and about three-fourths of a mile distance from the shore, there being no harbor, bay, or inlet, to protect her in the least.

I am, very respectfully, sir, your obedient servant,

W. S. HOLABIRD,

U. S. District Attorney, Conn. Dist.

Hon. JOHN FORSYTH,

Secretary of State, Washington City.

[*Passport for J. Ruiz.*]

[*Passport for P. Montes.*]

Passport for 49 slaves belonging to J. Ruiz.

N. HABANA, 26 de Junio de 1839.

Filiacion.		Concedo licencia, á cuarenta y nueva negros
Estatura	- -	ladinos, nombrados Antonio, Simon, Lucas, José,
Edad	- -	Pedro, Martin, Manuel, Andres, Eduardo, Celedonio,
Color	- -	Bartolo, Ramon, Agustin, Evaristo, Casimiro,
Pelo	- -	Melchor, Gabriel, Santorion, Escolastico, Pascual,
Frente	- -	Estanislao, Desiderio, Nicolas, Esteban, Tomas,
Cejas	- -	Cosme, Luis, Bartolo, Julian, Frederico, Salustiano,
Ojos	- -	Ladislao, Celestino, Epifaneo, Tibureo, Venancio,
Nariz	- -	Felipe, Francisco, Hipolito, Benito, Ysidoro, Vicente,
Boca	- -	Dionisio, Apoloneo, Esequiel, Leon, Julio,
Barba	- -	Hipolito, y Zenon, de la propiedad de Don José
Señales particulares		Ruiz, para que pasen á Puerto Principe por mar, debiendo presentarse con esta al juez territorial respectivo.

Esplota—Derecho dos reales—una rubrica Comandancia de Matriculas. Pasan en la goleta Amistad á la Guanaja, patron Ferrer.

Habana, y Junio 27 de 1839.

MARTINEZ.

Passport for three slaves belonging to P. Montes.

N. HABANA, 22 de Junio de 1839.

Filiacion.		
Estatura	- -	Concedo licencia á tres negras ladinas, nombradas Juana, Francisca, y Josefa, de la propiedad de Don Pedro Montes, para que pasen á Puerto Principe por mar, debiendo presentarse con esta al juez territorial respectivo.
Edad	- -	
Color	- -	
Pelo	- -	
Frente	- -	
Cejas	- -	
Ojos	- -	
Nariz	- -	
Boca	- -	
Barba	- -	
Señales particulares		

Espeleta—Derecho dos reales—una rubrica. Comandancia de Matriculas. Pasan en la goleta Amistad à la Guanaja, patron Ferrer.

Habana, y Junio 27 de 1839.

MARTINEZ.

[*Protection for Celestino Ferrer.*]

[*Protection for Jacinto Verdagne.*]

[*Register of the Amistad, her clearance and passport, by all the authorities for the crew and passengers, vessel, &c.*]

[*Permit of the custom-house for shipping goods.*]

[*Passport for J. Ruiz.*]

[*Passport for P. Montes.*]

Passport for 49 slaves belonging to J. Ruiz.

HAVANA, June 26, 1839.

Description.	
Height - -	I grant permission to forty-nine sound negroes,* named Antonio, Simon, Lucas, Jose,
Age - -	Pedro, Martin, Manuel, Andres, Edward, Ce-
Complexion - -	ledonio, Bartolo, Ramon, Agustin, Evanisto,
Eyes - -	Casimiro, Melchior, Gabriel, Santorion, Es-
Nose - -	colastico, Pascual, Estanislao, Desiderio, Nic-
Mouth - -	olas, Esteban, Tomas, Cosme, Luis, Bartolo,
Skin - -	Julian, Frederico, Salustiano, Ladislao, Ce-
Eyebrows - -	lestino, Epifaneo, Tiburcio, Venducio, Fe-
Beard - -	lipo, Hipolito, Benito, Isidoro, Vicente, Dio-
Particular Marks -	nisisio, Apoloneo, Esequiel, Leon, Julio, Hipo-
	lito, and Zenon, all belonging to Don Jose
	Ruiz, to go to Puerto Principe by sea, they
	being required to present themselves before
	the respective territorial judges.

* "Sound negroes!" This is a fraudulent translation—See the original Spanish document, page 30. There the phrase is "negros ladinos," which, as is well known, means *negroes long settled in Cuba*, and acclimated there, and introduced before 1820—a term totally inapplicable to *Bozals* or negroes recently imported. See deposition in District Court by Dr. Madden, British Superintendent of liberated Africans at Havana. And yet the officers of the United States Court have procured a translation of the Passport, in which "negros LADINOS" is made to read "sound negroes!" And this is contained in a public document, transmitted to Congress by the President of the United States, and published by authority of the House of Representatives!!

Espeleta—Duty two reals—one stamp. Comandancia de Matriculas.
They go in the schooner Amistad, Captain Ramon Ferrer, to Guanaja.
Havana, June 27, 1839. MARTINEZ.

Passport for three slaves belonging to P. Montes.

HAVANA, June 22, 1839.

Description.	
Height . . .	I grant permission to three sound negro women,* named Juana, Francisca, and Josefa, belonging to Don Pedro Montes, to go to Puerto Principe by sea, they being required to present themselves before the respective territorial judges.
Age . . .	
Complexion . . .	
Eyes . . .	
Nose . . .	
Mouth . . .	
Skin . . .	
Eyebrows . . .	
Beard . . .	
Particular marks	

Espeleta—Duty one real—one signature. Comandancia de Matriculas.
They go in the schooner Amistad, Captain Ferrer, to Guanaja.
Havana, June 27, 1839. MARTINEZ.

[Protection for Celestino Ferrer.]

[Protection for Jacinto Verdagne.]

[Register of the Amistad, her clearance and passport, by all the authorities, for the crew and passengers, vessel, &c.]

[Permits of the Custom-house for shipping goods.]

To the Marshal of the district of Connecticut, greeting :

Whereas, upon the complaint and information of the United States by William S. Holabird, district attorney of the United States for said district against Simon, Lucas, Joseph, Peter, Martin, Manuel, Andrew, Edward, Caledonio, Bartholomew, Raymond, Augustin, Evaristo, Casimir, Melchior, Gabriel, Santorion, Escolastico, Paschal, Stanislaus, Desiderio, Nicholas, Stephen, Thomas, Cosme, Louis, Bartholomew, Julian, Frederick, Saliustiano, Ladislao, Celestino, Epiphaneo, Tiburcio, Venducio, Philip, Hypolite, Benito, Isidore, Vincent, Dyonisius, Apoloneo, Ezekiel, Leon, Julius, Hypolite, and Zenon, for the murder of Ramon Ferrer, on the 25th day of June, 1839, on the high seas, within the admiralty and

* The words here translated "sound negro women" are in the original Spanish (see page 29) "negras ladinas," that is *negroes long settled in Cuba*. See note on page 30.

maritime jurisdiction of the United States, it was ordered and adjudged by the undersigned that they, against whom said information and complaint was made, stand committed to appear before the circuit court of the United States for the district of Connecticut, to be holden at Hartford, in said district, on the 17th day of September, 1839, to answer to the said crime of murder, as set forth in said information and complaint.

You are therefore commanded to take the said persons named as above, and charged with said crime, and them safely keep in the jail in New Haven, in said district, and them have before the circuit court of the United States, to be holden at Hartford, in said district, on the 17th day of September, A. D. 1839. Hereof fail not, &c.

Dated at New London, August 29, 1839.

ANDREW P. JUDSON,

Judge of the United States for the district of Connecticut.

DISTRICT OF CONNECTICUT, ss.

Then I proceeded to arrest the within named persons, but found they did not answer to the names set forth in this warrant, they being the names given them at Havana for the purpose of shipment, but found them to answer to the following names, to wit : Cinque, Barnah 1st, Carpru, Demurah, Forrie 1st, Thumah, Wolwah, Toooh, Couomah, Choolah, Barnah 2d, Boah, Cabbah, Poomah, Rimbo, Puah, Bang-te-ah, Saah, Coulu, Poule, Morrah, Yahonie, Nahquoe, Quahto, Lesse, Cen, Forrie 2d, Kennah, Larnance, Fajanah, Faah, Yahboy, Fahquanah, Berrie, Fawnie, Chackamaso, Gahbow, and Fasa, I therefore took the above-named persons into custody, and them committed to the custody and keeping of the jailer at New Haven, in said district ; and left with the said jailer a true and attested copy of this warrant ; and now, on this 17th of September, 1839, have them in my custody at Hartford, as within, except Fasa, who died September 3d, Faah, who died September 11th, and Wolwah, who died September 14, 1839.

NEW LONDON, *August 29, 1839.*

Attest :

NORRIS WILCOX,

United States Marshal for the district of Connecticut.

MARSHAL'S OFFICE, *November 1, 1839.*

The foregoing is a true copy of the original warrant, with my doings thereon endorsed.

Attest :

N. WILCOX, *Marshal.*

To the Marshal of the district of Connecticut, greeting :

Whereas, upon the complaint and information of the United States by William S. Holabird, Esq., district attorney of the United States for said district, against Simon and others, for the murder of Ramon Ferrer, on the 25th day of June, 1839, on the high seas, within the admiralty and maritime jurisdiction of the United States, it was ordered and adjudged that they, the said Simon and others, stand committed to appear before the circuit court of the United States for the district of Connecticut, to be holden at

Hartford, in said district, on the 17th day of September, 1839, to answer to the crime as set forth in said complaint: and whereas Joanna, Frances, Ann, Josephine, and Anthony, witnesses for the United States in said information and complaint, were ordered by the undersigned severally to become recognised to the United States, with surety in the sum of one hundred dollars, to appear before said circuit court at the time and place above named, as witnesses to testify to the charge set forth in said complaint and information; and they, and each of them, having neglected to become recognised as aforesaid, you are, therefore, commanded to take the said Joanna, Frances, Ann, Josephine, and Anthony, and them safely keep in the jail in New Haven in said district, and them have before the circuit court of the United States, to be holden at Hartford, in said district, on the 17th day of September, 1839. Hereof fail not, &c.

Dated at New London, August 29, 1839.

ANDREW P. JUDSON,
Judge of the U. S. for the District of Connecticut.

DISTRICT OF CONNECTICUT, ss.

Then I took into custody the within named persons answering to the following names, to wit: Antonio, Time, Kine, Mahgra, and Carrii, and them committed into the custody and keeping of the keeper of the jail in New Haven, in said district of Connecticut; and left with said jailer a true and attested copy of this warrant; and now, on this 17th day of September, A. D. 1839, them have in my custody at Hartford, as within I am directed.

Attest:

NORRIS WILCOX,
U. S. Marshal for District of Connecticut.

NEW LONDON, August 29, 1839.

MARSHAL'S OFFICE, NEW HAVEN,
November 1, 1839.

The foregoing is a true copy of the original, with my doings thereon endorsed.

Attest:

N. WILCOX, *Marshal.*

Mr. Holabird to Mr. Forsyth.

DISTRICT OF CONNECTICUT,
Office of Dist. Atty, Winchester, November 14, 1839.

SIR: I am under the necessity of asking for authority to draw on the marshal of the district for a reasonable sum, to enable me to employ assistant counsel in the case of the Amistad and negroes. My health is feeble; and if the matter is not disposed of by the Executive before our court sits, much is to be done. The fees allowed to the district attorney in this district are so small, that should I surrender all that could be taxed to my assistant counsel, it would not be considered really as any compensation. I named this subject to the President at Albany; who remarked that, in case I found it necessary, I could make the application to you.

I am, sir, with great respect, your obedient servant,

W. S. HOLABIRD.

Hon. JOHN FORSYTH,
Secretary of State.

Acting Secretary of State to Mr. Holabird.

DEPARTMENT OF STATE,
Washington, November 18, 1839.

SIR: Your letter of the 14th instant was, last evening, received at this department. The President, to whom it has been submitted, has instructed me to authorize you to employ an assistant counsel in the case of the *Amistad*, whose compensation, not to exceed two hundred dollars, will be determined by this department.

I am, sir, your obedient servant,

A. VAIL,
Acting Secretary of State.

W. S. HOLABIRD, Esq.,
Att'y U. S. for Dist. of Conn., New Haven.

Mr. Forsyth to Mr. Holabird.

DEPARTMENT OF STATE,

Washington, January 6, 1840.

SIR: Your letter of the 20th ultimo was duly received, and has been laid before the President. The Spanish minister having applied to this department for the use of a vessel of the United States, in the event of the decision of the circuit court in the case of the *Amistad* being favorable to his former application, to convey the negroes to Cuba, for the purpose of being delivered over to the authorities of that island, the President has, agreeably to your suggestion, taken in connection with the request of the Spanish minister, ordered a vessel to be in readiness to receive the negroes from the custody of the marshal as soon as their delivery shall have been ordered by the court.* As the request of the Spanish minister for the delivery of the negroes to the authorities of Cuba has, for one of its objects, that those people should have an opportunity of proving, before the tribunals of the island, the truth of the allegations made in their behalf in the course of the proceedings before the circuit court that they are not slaves, the President, desirous of affording the Spanish courts every facility that may be derived from this country towards a fair and full investigation of all the circumstances, and particularly of the allegation referred to with regard to the real condition of the negroes, has directed that Lieutenants Gedney and Meade be directed to proceed to Cuba, for the purpose of giving their testimony in any proceedings that may be instituted there in the premises; and that complete records of all those which have been had before the circuit court of your district, including the evidence taken in the cause, be, with the same view, furnished to the Spanish colonial authorities. In obedience to this last mentioned order,

* A most extraordinary procedure. The government could not wait, it seems, to learn the decision of the court before taking action to facilitate the designs of the Spaniards in removing their victims from the shores of this free country. And this was done, at the suggestion of the U. S. Attorney for the District of Connecticut, in connection with the request of the Spanish minister! In the sequel it will be seen that the object was to remove the Africans before the case could be appealed by their counsel. To W. S. Holabird, Esquire, of Connecticut, belongs the infamy of making this "suggestion," so eagerly entertained by the government of the United States.

you will cause to be prepared an authentic copy of the records of the court in the case, and of all the documents and evidence connected with it, so as to have it ready to be handed over to the commander of the vessel which is to take out the negroes, who will be instructed as to the disposition he is to make of them.

With regard to the schooner *Amistad*, which the Spanish minister represents not to be in a condition to be sent to sea, and the goods found on board as part of her cargo, as the presumption is that the court will decree the same disposition of them as of the negroes, they are to remain in the custody of the marshal, to be delivered over to such persons as the Spanish minister may appoint; subject, however, in case of their being sold in the United States, to the legal demands of the custom-house upon them.

I am, sir, your obedient servant,

JOHN FORSYTH.

W. S. HOLABIRD, Esq.,
Att'y U. S. for Dist. of Conn., New Haven.

Mr. Holabird to Mr. Forsyth.

NEW HAVEN, January 11, 1840.

SIR: Lieutenant Paine has shown me the Executive warrant to the marshal of this district for the delivery of the negroes of the *Amistad*, in which it is stated that they are now holden in custody under a process from the "*circuit court*;" and also, in his instructions, the same term is used. They are not holden under any order of the circuit court, but under an order from the *district court*, and should have been so stated in the warrant and instructions. Should the pretended friends of the negroes obtain a writ of habeas corpus, the marshal could not justify under that warrant.

The marshal wishes me to inquire whether, in the event of a decree by the court requiring him to release the negroes, or in case of an appeal by the adverse party, it is expected the Executive warrant will be executed; and requests your instructions on that subject.

I have deemed it my duty to dispatch a messenger asking a correction of the aforesaid errors in the warrant and instructions, and your additional instructions on the points aforesaid, as requested by the marshal.*

We are progressing with the trial. The evidence is all in, and the case will probably be submitted to the court to-day; and a decision will undoubtedly be had by the time the bearer will be able to return to this place.

In great haste, I am, sir, your obedient servant,

W. S. HOLABIRD,
United States District Attorney.

Hon. JOHN FORSYTH,
Secretary of State.

* The indecent haste of the government in affording facilities to the Spaniards to remove their victims is seen in the phraseology of the warrant of the President of the United States, in which the term "*Circuit Court*" is used for "*District Court*" (see page 48) an error requiring the dispatch of a special messenger to Washington to have it rectified so that a legal warrant might be obtained from the seat of government before the conclusion of the trial, lest perchance, an appeal should be entered, and thus the design of government be defeated!

Mr. Forsyth to Mr. Holabird.

[CONFIDENTIAL.]

DEPARTMENT OF STATE, *January 12, 1840.*

SIR: Your letter of the 11th instant has just been received. The order for the delivery of the negroes of the *Amistad* is herewith returned, corrected agreeably to your suggestion. With reference to the inquiry from the marshal, to which you allude, I have to state, by direction of the President, that, if the decision of the court is such as is anticipated, the order of the President is to be carried into execution, unless an appeal shall actually have been interposed. You are not to take it for granted that it will be interposed.* And if, on the contrary, the decision of the court is different, you are to take out an appeal, and allow things to remain as they are until the appeal shall have been decided.

I am, sir, your obedient servant,

JOHN FORSYTH.

W. S. HOLABIRD, Esq.,

Attorney U. S., Marshal for Dist. of Connecticut.

Mr. Forsyth to Mr. Holabird.

DEPARTMENT OF STATE,

Washington, January 17, 1840.

SIR: The instructions in my communication of the 12th instant, in relation to the case of the *Amistad*, the decision of which has been received at this department, would probably supersede the necessity of any further directions as to the course left for you to pursue. For fear, however, that that communication should not have reached you, I have to acquaint you with the desire of the President, that you take the necessary measures to carry the case, by appeal, to the circuit court, both on that branch of the decision which relates to the negroes, and that which grants salvage on the vessel and the goods found on board. That part which concerns the slave Antonio is not to be disturbed; and instructions will be forwarded to you, designating the parties to whom he is to be delivered up.

From information which has reached this department, there appears to be a disposition, on the part of the parties interested in the vessel and cargo, either to sell the property, and deposite the proceeds to abide the final issue of the case, or to ask the delivery of it on bond, to answer the same contingency. With a view to save the property from further loss by deterioration, you are desired to countenance any movement that may be made in this regard by the proper persons, taking care that the rights of all be effectually and equally protected; but no proposition, in this particular, is to be made by you without further instructions from this department, which will be given if the Spanish minister shall request them.

I am, sir, your obedient servant,

JOHN FORSYTH.

W. S. HOLABIRD, Esq., *Attorney*

U. S. District of Connecticut, New Haven.

* Mark this!—"You are not to take it for granted that it (an appeal) will be interposed." That is, if the Counsel for the Africans do not enter an appeal *instantly*, the Africans are to be hurried on board the U. S. Schooner *Grampus*, and taken to Cuba—there to be made a terrific example of to terrify the Bozal negroes not to make a similar strike for liberty!

Opinion of the Attorney General.

ATTORNEY GENERAL'S OFFICE, 1839.

SIR: I have the honor to acknowledge the receipt of yours of the 24th of September, in which, by direction of the President, you refer to this office the letter of the Spanish minister of the 6th of September, addressed to you; also the letter of Seth P. Staples and Theodore Sedgwick, jr., Esqrs., who have been engaged as counsel for the negroes taken on board the schooner *Amistad*, addressed to the President of the United States; and asking my opinion upon the different legal questions presented by these papers.

I have given to the subject all the consideration which its importance demands; and now present to you, and through you to the President, the result of my reflections upon the whole subject.

The following is the statement of facts contained in your communication: "The *Amistad* is a Spanish vessel; was regularly cleared from Havana, a Spanish port in Cuba, to Guanaja, in the neighborhood of Puerto Principe, another Spanish port; that her papers were regular; that the cargo consisted of merchandise and slaves, and was duly manifested as belonging to Don José Ruiz and Don Pedro Montes; that the negroes, after being at sea a few days, rose upon the white persons on board; that the captain, his slave, and two seamen, were killed, and the vessel taken possession of by the negroes; that two white Spaniards, after being wounded, were compelled to assist in navigating the vessel, the negroes intending to carry her to the coast of Africa; that the Spaniards contrived, by altering the course of steering at night, to keep her on the coast of the United States; that, on seeing land off New York, they came to the coast, and some of the negroes landed to procure water and provisions; that, being on the point of leaving the coast, the *Amistad* was visited by a boat from Captain Gedney's vessel, and that one of the Spaniards, claiming protection from the officer commanding the boat, the vessel and cargo, and all the persons on board, were sent into New London for examination, and such proceedings as the laws of nations and of the United States warranted and required."

In the intercourse and transactions between nations, it has been found indispensable that due faith and credit should be given by each to the official acts of the public functionaries of others. Hence the sentences of prize courts under the laws of nations, or admiralty, and exchequer or other revenue courts, under the municipal law, are considered as conclusive as to the proprietary interest in, and title to, the things in question; nor can the same be examined into in the judicial tribunals of another country. Nor is this confined to judicial proceedings. The acts of other officers of a foreign nation, in the discharge of their ordinary duties, are entitled to the like respect. And the principle seems to be universally admitted, that, whenever power or jurisdiction is delegated to any public officer or tribunal, and its exercise is confided to his or their discretion, the acts done in the exercise of that discretion, and within the authority conferred, are binding as to the subject matter; and this is true, whether the officer or tribunal be legislative, executive, judicial, or special.—Wheaton's *Elements of International Law*, page 121; 6th Peters, page 729.

Were this otherwise, all confidence and comity would cease to exist among nations; and that code of international law, which now contri-

butes so much to the peace, prosperity, and harmony of the world, would no longer regulate and control the conduct of nations. Besides, in this case, were the Government of the United States to permit itself to go behind the papers of the schooner *Amistad*, it would place itself in the embarrassing condition of judging upon the Spanish laws, their force, effect, and their application to the case under consideration.

This embarrassment and inconvenience ought not to be incurred. Nor is it believed a foreign nation would look with composure upon such a proceeding, where the interests of its own subjects or citizens were deeply concerned. In addition to this, the United States would necessarily place itself in the position of judging and deciding upon the meaning and effect of a treaty between Spain and Great Britain, to which the United States is not a party. It is true, by the treaty between Great Britain and Spain, the slave trade is prohibited to the subjects of each; but the parties to this treaty or agreement are the proper judges of any infraction of it, and they have created special tribunals to decide questions arising under the treaty; nor does it belong to any other nation to adjudicate upon it, or to enforce it. As, then, this vessel cleared out from one Spanish port to another Spanish port, with papers regularly authenticated by the proper officers at Havana, evidencing that these negroes were slaves, and that the destination of the vessel was to another Spanish port, I cannot see any legal principle upon which the Government of the United States would be authorized to go into an investigation for the purpose of ascertaining whether the facts stated in those papers by the Spanish officers are true or not. Suppose, however, that the evidence contained in these papers should not be entitled to all the effect I have given it; would that change or alter the course which should be pursued by the Government? I think it would not; and a reference to the principles of international law, as approved and sanctioned by our judicial tribunals, will clearly show it. In the case of the *Antelope*, (10 Wheaton, page 66,) this subject was fully examined, and the opinion of the Supreme Court of the United States establishes the following points:

1. That, however unjust and unnatural the slave trade may be, it is not contrary to the law of nations.

2. That, having been sanctioned by the usage and consent of almost all civilized nations, it could not be pronounced illegal, except so far as each nation may have made it so by its own acts or laws; and these could only operate upon itself, its own subjects or citizens; and, of course, the trade would remain lawful to those whose Government had not forbidden it.

3. That the right of bringing in and adjudicating upon the case of a vessel charged with being engaged in the slave trade, even where the vessel belongs to a nation which has prohibited the trade, cannot exist. The courts of no country execute the penal laws of another, and the course of the American Government on the subject of visitation and search would decide any case in which that right had been exercised by an American cruiser, on the vessel of a foreign nation not violating our municipal laws, against the captors.

It follows, that a foreign vessel engaged in the African slave trade, captured on the high seas in time of peace, by an American cruiser, and brought in for adjudication, would be restored.

The opinions here expressed go far beyond the present case; they embrace cases where the negroes never have been within the territorial limits of the nation of which the claimant is a citizen. In this case, the

negroes were in the island of Cuba, a portion of the dominions of Spain; they were there recognised and treated as property by the Spanish authorities of the island. And after this, in their transmission from the port of Havana to another Spanish port, the occurrence took place which has given rise to this investigation. This vessel was not engaged in the slave trade; she was employed lawfully in removing these negroes, as slaves, from one part of the Spanish dominions to another, precisely in the same way that slaves are removed, by sea, from one slave State to another in our own country. I consider the facts as stated, so far as this Government is concerned, as establishing a right of ownership to the negroes in question, in the persons in whose behalf the minister of Spain has made a demand upon the Government of the United States.

Under the statement of facts, another inquiry which presents itself, is, What power does the Government of the United States possess, or what jurisdiction has it for the purpose of trial and punishment, over the persons of these men of color, who are charged with having risen upon the captain and crew, and murdered the captain and part of the crew, and took the vessel under their own control?

If these acts, according to the principles of international law, or under the acts of the Congress of the United States, constitute or amount to piracy, then jurisdiction to try and punish belongs to the United States.

The question arises, Do these acts constitute piracy?

"Piracy is defined to be the offence of depredating on the seas, without being authorized by any sovereign State, or with commissions from different sovereigns at war with each other." "Pirates being the common enemies of all mankind, and all nations having an equal interest in their apprehension and punishment, they may be lawfully captured on the high seas by the armed vessels of any particular State, and brought within its territorial jurisdiction for trial by its tribunals."—Wheaton's Elements of International Law, page 113.

Chancellor Kent, in his Commentaries, (vol. 1, page 183,) says, "Piracy is robbery, or a forcible depredation, on the high seas, without lawful authority, and done *animo furandi*, and in the spirit and intention of universal hostility. It is the same offence at sea with robbery on land; and all the writers on the law of nations, and on the maritime law of Europe, agree in this definition of piracy. Pirates have been regarded by all civilized nations as the enemies of the human race, and the most atrocious violators of the universal law of society. They are everywhere pursued and punished with death; and the severity with which the law has animadverted upon this crime arises from its enormity and danger, the cruelty that accompanies it, the necessity of checking it, the difficulty of detection, and the facility with which robberies may be committed upon pacific traders in the solitude of the ocean. Every nation has a right to attack and exterminate them, without any declaration of war; for though pirates may form a loose and temporary association among themselves, and re-establish, in some degree, those laws of justice which they have violated with the rest of the world, yet they are not considered as a national body, or entitled to the laws of war, as one of the community of nations. They acquire no rights by conquest, and the law of nations and the municipal law of every country authorize the true owner to reclaim his property taken by pirates, wherever it can be found; and they do not recognize any title to be derived from an act of piracy. The principle, that *a piratis et latronibus capta dominium non mutant* is the received opinion of ancient civilians, and modern writers on general jurisprudence;

and the same doctrine was maintained in the English courts of common law prior to the great modern improvements made in the science of the law of nations."

In the case of the United States against Smith, (5 Wheaton, page 153,) the Supreme Court of the United States clearly recognise the foregoing description and definitions of piracy, and state *that the defendant in that case, and his associates, were, at the time of committing the offence, freebooters upon the sea, not under the acknowledged authority, or deriving protection from, the flag or commission of any Government; and therefore, the defendant was subject to trial within the United States.* From this language it may clearly be inferred that, had the vessel been sailing under the authority and flag of any particular Government, the defendant would *not have been* subject to trial in any court of the United States; but that his case would have been exclusively within the jurisdiction of the tribunals of that State under whose commission, authority, or flag he was navigating his vessel. And in the case of the United States vs. Palmer, (3 Wheaton, page 610,) the Supreme Court of the United States expressly decided that the crime of robbery committed by a person on the high seas, on board of a ship belonging exclusively to subjects of a foreign State, on persons in a vessel belonging exclusively to subjects of a foreign State, was not piracy under the act of Congress approved on the 30th of April, 1790, and was not punishable in the courts of the United States. In the case now before me, the vessel is a Spanish vessel, belonging exclusively to Spaniards, navigated by Spaniards, and sailing under Spanish papers and flag, from one Spanish port to another. It therefore follows, unquestionably, that any offence committed on board is cognizable before the Spanish tribunals, and not elsewhere.

These two points being disposed of—1st. That the Government of the United States is to consider these negroes as the property of the individuals in whose behalf the Spanish minister has put up a claim; 2d. That the United States cannot proceed against them criminally;—the only remaining inquiry is, what is to be done with the vessel and cargo? the negroes being a part of the latter.

A case like the present is not embraced by any of the legal provisions contained in the different acts of Congress, so as to justify this Government, in any of its departments, to act upon it for the purpose of transporting these negroes to Africa. In the construction of the different acts of Congress in relation to the "slave trade," it is to be observed that the statutes operate only where our municipal jurisdiction might be applied, consistently with the general theory of international law, to the persons of our citizens or to foreigners on board of American vessels.—1 Kent's Commentaries, page 182; 3 Wheaton, page 610.

And, it may be added, that those acts would operate, of course, upon all persons who might violate them within the limits of the United States. But the claimants of these negroes have violated none of our laws. They are within the limits of the United States, to be sure, with their own consent; but that consent resulted from, and was produced by, circumstances so imperious and overruling in their nature, as to have left them no choice. They have not come within our territories with the view or intention of violating the laws of the United States; nor had they, before their arrival within the waters of the United States, been guilty of an infraction of them. They have not introduced these negroes into the United States for the purpose of sale, or holding them in servitude within the United States; so far from any illegal intention or design to violate the laws of

the United States being established upon the claimants, the case clearly shows that not only no violation of our laws has been committed, but no such violation was in contemplation. It therefore appears to me that this subject must be disposed of upon principles of international law and the existing treaties between Spain and the United States.

It would scarcely be doubted that, under the law of nations, property rescued from pirates or robbers by a vessel belonging to a friendly Power, and brought into a port of that friendly Power, would be restored to the rightful owners; and this, without any treaty stipulation.

The 9th article of the treaty between Spain and the United States, dated 27th October, 1795, (which has been continued in force by a subsequent treaty,) is as follows: "All ships and merchandise of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either state, and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof."

This makes the case much stronger in favor of the Spanish claimants. There can be no difference, in reason, whether the vessel be captured on the high seas, or within our own waters or ports; because, if captured on the high seas, they are to be brought into port and delivered into the custody of the appropriate public officers; and if captured after having already come into a port, they should be treated in like manner. It therefore seems to me that this case is clearly within the spirit and meaning of the 9th article, and that the vessel and cargo should be restored entire, so far as practicable.

My opinion further is, that the proper mode of executing this article of the treaty, in the present case, would be for the President of the United States to issue his order, directed to the marshal in whose custody the vessel and cargo are, to deliver the same to such persons as may be designated by the Spanish minister to receive them. The reasons which operate in favor of a delivery to the order of the Spanish minister are—

1. The owners of the vessel and cargo are not all in this country, and, of course, a delivery cannot be made to them.

2. This has become a subject of discussion between the two Governments, and, in such a case, the restoration should be made to that agent of the Government who is authorized to make, and through whom the demand is made.

3. These negroes are charged with an infraction of the Spanish laws; therefore, it proper that they should be surrendered to the public functionaries of that Government, that if the laws of Spain have been violated, they may not escape punishment.

4. These negroes deny that they are slaves; if they should be delivered to the claimants, no opportunity may be afforded for the assertion of their right to freedom. For these reasons, it seems to me that a delivery to the Spanish minister is the only safe course for this Government to pursue.

I have the honor to be, with great respect, your humble servant.*

HON. JOHN FORSYTH,

Secretary of State.

* This remarkable letter has no signature, nor any date but 1839. But it is right that the world should know that the *Attorney General of the United States of America*, who gave this opinion to the President, after giving to the subject "all the consider-

Messrs. Staples and Sedgwick to the President of the United States.

NEW YORK, September 13, 1839.

SIR: We have been engaged as counsel of the Africans brought in by the Spanish vessel, the *Amistad*; and, in that capacity, take the liberty of addressing you this letter.

These Africans are now under indictment in the circuit court of the second circuit on a charge of piracy, and their defence to this accusation must be established before that tribunal. But we are given to understand, from authority not to be doubted, that a demand has already been made upon the Federal Government, by the Spanish minister, that these negroes be surrendered to the authorities of his country; and it is on this account that we now address you.

We are also informed that these slaves are claimed under the 9th article of the treaty of 1795, between this country and Spain, by which all ships and merchandise rescued out of the hands of pirates and robbers on the high seas are to be restored to the true proprietor, upon due and sufficient proof.

We now apply to you, sir, for the purpose of requesting that no order may be made by the Executive until the facts necessary to authorize its interposition are established by the judicial authority in the ordinary course of justice. We submit that this is the true construction of the treaty; that it is not a mere matter of Executive discretion; but that, before the Government enforces the demand of the Spanish claimant, that demand must be substantiated in a court of justice.

It appears to us manifest that the treaty could never have meant to have submitted conflicting rights of property to mere official discretion, but that it was intended to subject them to the same tribunals which, in all other cases, guard and maintain our civil rights. Reference to the 7th article, in our opinion, will confirm this position.

It will be recollected that, if we adopt this as the true construction of the treaty, should any occasion ever arise when our citizens shall claim the benefit of this section, Spain would be at liberty to give it the same interpretation; and that the rights of our citizens will be subjected to the control of subordinate ministerial agents, without any of those safeguards which courts of justice present for the establishment of truth and the maintenance of rights. We submit, further, that it never could be intended that the Executive of the Union should be harassed by the investigation of claims of this nature, and yet, assuredly, if the construction be contended for be correct, such must be the result; for, if *he* is to issue the order upon due and sufficient proof, the proof must be sufficient to *his* mind.

We further submit that, in regard to the Executive, there are no rules of evidence nor course of proceeding established; and that, in all such cases, unless the claimant be directed to the courts of justice, the conduct of the affair must, of necessity, be uncertain, vague, and not such as is calculated to inspire confidence in the public or the parties. We can find

action which its importance demands," was the Hon. Felix Grundy, from Tennessee, and now a Senator of the United States. What evidence this opinion furnishes of the fitness of the gentleman for the high office of Attorney-General, members of the legal profession may determine. It is sufficient to say that it is contrary to the opinions of the most eminent jurists this country has produced, and it would seem that a lawyer who would venture on promulgating such doctrines was unfit to be even an attorney of the most inconsiderable district in the United States.

nothing in the treaty to warrant the delivery of these individuals as offenders; and the Executive of the Union has never thought itself obliged, under the laws of nations, to accede to demands of this nature.

These suggestions are of great force in this case, because we, with great confidence, assert, that neither according to the law of this, nor that of their own country, can the pretended owners of these Africans establish any legal title to them as slaves.

These negroes were, it is admitted, carried into Cuba, contrary to the provisions of the treaty between Spain and Great Britain of 1817, and of the orders made in conformity therewith; orders which have been repeated, at different times, to as late a date as the 4th November, 1838, by which the trade is expressly prohibited; and if they had been taken on board the slaver, they would have been unquestionably emancipated.

They were bought by the present claimants, Messrs. Ruiz and Montes, either directly from the slaver, or under circumstances which must, beyond doubt, have apprized them that they were illegally introduced into the Havana; and on this state of facts we, with great respect, insist that the purchasers of Africans illegally introduced into the dependencies of a country which has prohibited the slave trade, and who make the purchase with knowledge of this fact, can acquire no right. We put the matter on the Spanish law; and we affirm that Messrs. Ruiz and Montes have no title, under that law, to these Africans.

If this be so, then these negroes have only obeyed the dictates of self-defence. They have liberated themselves from illegal restraint, and it is superfluous to say that Messrs. Ruiz and Montes have no claim whatever under the treaty.

It is this question, sir, fraught with the deepest interest, that we pray you to submit for adjudication to the tribunals of the land. It is this question that we pray may not be decided in the recesses of the cabinet, where these unfriended men can have no counsel and can produce no proof, but in the halls of Justice, with the safeguards that she throws around the unfriended and oppressed.

And, sir, if you should not be satisfied with the considerations here presented, we then submit that we are contending for a right upon a construction of a treaty; that this point, at least, should be presented to the courts of justice; and, should you decide to grant an order surrendering these Africans, we beg that you will direct such notice of it to be given, as may enable us to test the question as we shall be advised, by habeas corpus or otherwise.

We have only, sir, to add, that we have perfect confidence that you will decide in this matter with a single regard to the interests of justice and the honor of the country, and that we are, with the greatest respect, your most obedient servants,

SETH P. STAPLES.

THEODORE SEDGWICK, JR.

MARTIN VAN BUREN, Esq.,

President of the United States.

The Secretary of State to Mr. Butler.

DEPARTMENT OF STATE,

Washington, October 24, 1839.

SIR: The Spanish minister has applied to this department for its interposition in procuring the release from arrest of Jose Ruiz and Pedro

Montes, two Spanish subjects, arrested and imprisoned at the suit of certain Africans. As this appears to be a civil suit before the ordinary local courts of law, the interference asked by the Spanish minister cannot, of course, be afforded; but as the case obviously grows out of the arrival of the *Amistad*, and the landing of the Africans on board, within our jurisdiction, now under consideration, the President, thinking that your agency might be useful to Messrs. Ruiz and Montes, desires you to put yourself in communication with those gentlemen, and to offer them your advice (and your aid, if necessary) as to any measure which it may be proper for them to take to obtain their release, and any indemnity to which, under our laws, they may be entitled for their arrest and detention.

I am, sir, your obedient servant,

JOHN FORSYTH.

B. F. BUTLER, Esq.,

Att'y U. S. for South. Dist. of New York.

Mr. Butler to the Secretary of State.

UNITED STATES DISTRICT ATTORNEY'S OFFICE,
New York, October 28, 1839.

SIR: Enclosed I have the honor to hand you copies of letters this day addressed by me to Mr. Jose Ruiz, and to his attorney and counsel, Mr. Purroy, in compliance with the instructions contained in your letter of the 24th instant. I need not, I hope, assure you that all the aid which it may be in my power to render to Mr. Ruiz, and also to Mr. Montes, (who has been discharged from arrest,) should he need my services, will be promptly afforded.

I am, sir, very respectfully, your obedient servant,

B. F. BUTLER,

United States Attorney.

Hon. JOHN FORSYTH,

Secretary of State of the United States.

UNITED STATES DISTRICT ATTORNEY'S OFFICE,
New York, October 28, 1839.

SIR: Enclosed is a letter, offering to Mr. Ruiz any advice and aid in my power in relation to his arrest and imprisonment in this city, written by me pursuant to instructions this day received from the Secretary of State of the United States.

I transmit it to you, because I understand that you are counsel for Mr. Ruiz in the suit brought against him, and I will thank you to cause it to be conveyed to him without delay. I am instructed to make the like offer in respect to Mr. Montes; but deem it unnecessary to do so, because I perceive by the public prints, that he has been discharged from arrest. As you are also counsel for Mr. Montes, I will be greatly obliged to you, should I be mistaken in this impression, and should he need my services, for information to that effect.

Very respectfully, your obedient servant,

B. F. BUTLER,

United States Attorney.

JOHN B. PURROY, Esq.,

Counsellor at Law, New York.

UNITED STATES DISTRICT ATTORNEY'S OFFICE,
NEW YORK, October 28, 1839.

SIR: By a communication this day received by me from the Secretary of State of the United States, I am informed that the Spanish minister has applied to the Department of State for its interposition in the matter of your imprisonment in this city. As the suit against you appears to be one of a civil nature, before the local courts of law, the Government of the United States cannot interfere in the manner requested; but I have been instructed by the Secretary to put myself in communication with you, and to offer you any advice and aid which may be in my power, and which may be necessary and proper to obtain your release, and any indemnity to which, under our laws, you may be entitled for your arrest and detention. This offer I have now the honor to make; and whenever I may be called on in your behalf, I will give such attention as may be in my power to your interests.

I am, sir, very respectfully, your obedient servant,

B. F. BUTLER,
United States Attorney.

Mr. JOSE RUIZ, *New York.*

Acting Secretary of State to Mr. Butler.

DEPARTMENT OF STATE,
WASHINGTON, November 9, 1839.

SIR: I transmit to you, by direction of the President, the translation of another note from the Spanish minister, respecting the arrest of Ruiz and Montes. It is the desire of the President that you should inform this department of the state of the proceedings in that case; and state whether there is, within your knowledge, any thing that the government can further do on this branch of the subject.

I am, sir, respectfully, your obedient servant,

A. VAIL,
Acting Secretary of State.

B. F. BUTLER, Esq., *Attorney U.S.,
for Southern Dist. of New York.*

Enclosure—Note of the Chevalier de Argaiz, of the 5th November, 1839.

Mr. Butler to Mr. Vail.

U. S. DISTRICT ATTORNEY'S OFFICE,
NEW YORK, November 18, 1839.

SIR: In reply to the inquiries made in your letter on the 9th instant, I have the honor to make the following statement:

On the day after the interview with the Spanish minister, referred to in his letter of the 5th of November, I visited Mr. Ruiz at the jail, and obtained from him all the material facts of his case. Immediately after this, I had a conference with Mr. Purroy, the counsel of Mr. Ruiz, by whom the application for the discharge of the defendants had been made and argued before the State courts, and received from him a copy of the papers, and a full statement of his proceedings.

In my subsequent reflections on the subject, and upon connecting the statements of Mr. Purroy with some facts stated to me by Mr. Ruiz, I thought it advisable to inquire into the laws of Cuba, in relation to several particulars which had not been adverted to in the papers and argu-

ment, and so informed Mr. Purroy. Fortunately, we obtained the assistance of a very competent Spanish lawyer, recently from Havana, where he had been for many years a judge, from whom we received the needed information. It did not, however, enable us to see any new ground for again asking for the discharge of the defendant; and it was therefore decided by Mr. Purroy and myself that the only course to be pursued, whether Mr. Ruiz gave bail to the actions, or remained in prison, was to require the plaintiffs to file their declarations, and to proceed to trial at the earliest possible day. This we shall accordingly do; and if the facts communicated to me by Ruiz shall be proved, (as I think they may be,) it is not at all probable that the plaintiffs can succeed in obtaining a verdict; indeed I think it exceedingly doubtful whether it is in the power of the plaintiffs to produce sufficient evidence on their part to put the defendants to the necessity of a defence.

Under these circumstances, and as the bail which would be required in the three suits pending against Mr. Ruiz would not exceed \$1,000, and as I cannot think it probable that any further suits would be instituted against him, I have thought that he had better give the bail, which could be easily procured, and, with the concurrence of Mr. Purroy, have so advised. Mr. Ruiz, however, for various reasons, and, among others, under the hope that his deliverance might be effected through the intervention of the Government of the United States on the application of the Spanish minister, has hitherto declined giving bail, and is therefore yet in prison.

In regard to the question, whether the Government can do any thing farther on this branch of the subject, I can only reply, that, after a very careful consideration of the facts, and of the views submitted to me by the Spanish minister, I cannot see that any further step can at present be taken by the United States for the benefit of Mr. Ruiz. It does not appear to me that any question has yet arisen under the treaty with Spain; because, although it is an admitted general principle, that neither the courts of, this State, nor those of the United States, can take jurisdiction of criminal offences committed by foreigners within the territory of a foreign State, yet it is equally settled in this country, that our courts will take cognizance of *civil* actions between foreigners transiently within our jurisdiction, founded upon contracts or other transactions made or had in a foreign State, provided by the laws of such foreign State, the like civil action could have been brought in the courts of that State. It was precisely to this last point that I called the attention of the Spanish lawyer, whom we consulted; and, as he informed me that it was competent for a person, having a capacity to sue, in the courts of Cuba, to maintain a *civil* action for assault and false imprisonment, I could not doubt the capacity of our courts to entertain the like suit. Whether the personal relations between the parties to the present actions are such as to prevent the maintaining of any such suit, is a question which involves the whole merits of the controversy, and which the judges have already decided cannot be settled *in limine*.

Should any question bearing on this point, or on any other involved in the case, arise upon the trial, under the treaty with Spain, it will, of course, be distinctly presented by me; and, if the decision be adverse, I shall advise the proper measures to carry it to the higher tribunals, and ultimately, if needful, to the Supreme Court of the United States, under the 25th section of the judiciary act of 1789.

I am, sir, &c., B. F. BUTLER,
United States Attorney.

TO AARON VAIL, Esq.,

Acting Secretary of State United States, Washington City.

Memorandum from the Department of State to the Secretary of the Navy.

DEPARTMENT OF STATE, January 2, 1840.

The vessel destined to convey the negroes of the *Amistad* to Cuba, to be ordered to anchor off the port of New Haven, Connecticut, as early as the 10th of January next, and be in readiness to receive said negroes from the marshal of the United States, and proceed with them to Havana, under instructions to be hereafter transmitted.

Lieutenants Gedney and Meade to be ordered to hold themselves in readiness to proceed in the same vessel, for the purpose of affording their testimony in any proceedings that may be ordered by the authorities of Cuba in the matter.

These orders should be given with special instructions that they are not to be communicated to any one.

The Secretary of the Navy to the Secretary of State.

NAVY DEPARTMENT, January 2, 1840.

SIR: I have the honor to state that, in pursuance of the memorandum sent by you to this department, the United States schooner *Grampus*, Lieutenant Commanding John S. Paine, has been ordered to proceed to the bay of New Haven, to receive the negroes captured in the *Amistad*. The *Grampus* will probably be at the point designated a day or two before the 10th instant, and will there await her final instructions in regard to the negroes.*

Lieutenants Gedney and Meade have been ordered to take passage in the *Grampus* for Havana, to give testimony there respecting the capture of the *Amistad*.

I am, very respectfully, your obedient servant,

J. K. PAULDING.

HON. JOHN FORSYTH, *Secretary of State.*

*The Secretary of State to the Secretary of the Navy.*DEPARTMENT OF STATE,
Washington, January 7, 1840.

SIR: I have received your letter of the 3d instant, stating that, agreeably to a memorandum furnished you from this department, orders had been given to Lieutenant Commanding John S. Paine, of the schooner *Grampus*, to proceed off the port of New Haven, and be in readiness to receive on board his vessel the negroes of the Spanish schooner *Amistad*, for the purpose of conveying them to Cuba, in the event of their delivery being adjudged by the circuit court, before whom the case is pending. It will be expedient for Lieutenant Paine, on his arrival off New Haven, to place himself in communication with Mr. W. S. Holabird, the attorney

* When the *Grampus* appeared in Long Island Sound last January, and anchored off the port of New Haven, it was generally supposed that it was in contemplation of government to remove the Africans to their native land in pursuance of the righteous decree of the District Judge. The friends of the Africans expressed fears that it was the design of government to send them to Cuba, but scarcely a person credited such an intimation. Those fears, it will be seen, were but too true. The knowledge of the facts will, it is believed, fill the breasts of true hearted Americans with indignation at the conduct of their government, while it exposes them to the scorn of the civilised world.

of the United States for the district of Connecticut, to whom corresponding instructions have been given, in order that he may receive the earliest information of the decision of the court, and advise with him as to the mode of carrying it into effect. I enclose an order from the President to the marshal of the district, directing him to place the negroes at the disposition of Lieutenant Paine, who, on being informed of the decision of the court, will serve it upon the marshal. Lieutenant Paine will likewise receive from the district attorney an authenticated copy of the records, documents, and evidence in the case, which he will convey to Cuba, to be used by the authorities of the island in any proceedings which they may institute in relation to it. On his arrival at Havana, he will give notice of it to the consul, with the enclosed letter, explanatory of the object of his visit; and will, in every respect, conform with such suggestions as he may receive from him with regard to the delivery of the negroes and papers to the authorities of the island. In a letter addressed by this department to the Spanish minister, his interference with the authorities of Cuba has been requested, in order that such testimony as it may be desirable to obtain from Lieutenants Gedney and Meade be taken as speedily as possible.

It is hoped, therefore, that those officers will be detained but a short time at Havana, and that they may return in the *Grampus*, if it shall suit the convenience of the Navy Department to afford them a passage home in that vessel.

I have the honor to be, sir, your obedient servant,

JOHN FORSYTH.

Hon. JAMES K. PAULDING,
Secretary of the Navy.

The marshal of the United States for the district of Connecticut will deliver over to Lieutenant John S. Paine, of the United States navy, and aid in conveying on board the schooner *Grampus*, under his command, all the negroes, late of the Spanish schooner *Amistad*, in his custody, under process now pending before the circuit court of the United States for the district of Connecticut.* For so doing, this order will be his warrant.

Given under my hand, at the city of Washington, this 7th day of January, A. D. 1840.

M. VAN BUREN.

By the President :

JOHN FORSYTH, *Secretary of State.*

* Circuit Court—instead of District Court—see note p. 35. This error shows extraordinary haste, to say the least, and had well nigh defeated the intentions of government in dispatching the U. S. Schooner *Grampus* to be ready to receive the Africans if the decision of the District Judge had been as was hoped and expected. It may be said in this instance as was remarked by a quaker lady to the claimant of a fugitive slave who was baffled in an attempt to remove his victim from a free State into bondage—"Thy prey hath escaped thee!" The good providence of Almighty God has hitherto protected these unfortunate Africans. Prayer is daily ascending on their behalf. A strong and anxious sympathy is felt in the community, and it will not be the fault of those who have expended much time and money in their defence, or of the eminent counsel who have been and will be employed, if the Africans shall be given up to the tender mercies of the Spaniards.